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Volume X



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PREFACE.

The Acts included in this Volume are printed as modified upto the 1st July, 1948.

The various amending Acts passed by the Indian and the Dominion Legislatures during the year 1939 to 1947 are shown in the Chronological Table but not reproduced in the Volume. The amendments and repeals made by those Acts having been given effect to in the appropriate places, it was considered unnecessary, in the interest of economy, to reprint the text of those Acts.

New Delhi ;
The 1st April, 1950

K. V. K. SUNDARAM, I. C. S.
*Secretary, Ministry of Law,
Government of India.*

LIST OF ABBREVIATIONS USED.

A.O. 1948.	. . . . .	for the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.
Ben	. . . . .	„ Bengal.
C.P.	. . . . .	„ Central Provinces.
Cl.	. . . . .	„ Clause.
Gen. R. & O.	. . . . .	„ General Statutory Rules and Orders.
Govt.	. . . . .	„ Government.
Ins.	. . . . .	„ Inserted.
Pt.	. . . . .	„ Part.
Sch.	. . . . .	„ Schedule.
Subs.	. . . . .	„ Substituted.
Vol.	. . . . .	„ Volume.

CHRONOLOGICAL TABLE OF THE UNREPEALED CENTRAL ACTS,
1939-1947.

1 Year	2 No.	3 Short title	4 Page.
1939	IV	The Motor Vehicles Act, 1939.	1
		*The Indian Naval Reserve Forces (Discipline) Act, 1939.	103
	VIII	The Dissolution of Muslim Marriages Act, 1939.	104
	IX	The Standards of Weight Act, 1939.	107
	XIII	The Workmen's Compensation (Amendment) Act, 1939.	Not reprinted.
		*The Indian Finance Act, 1939.	108
	XVI	The Registration of Foreigners Act, 1939.	111
	XIX	The Coal Mines Safety (Stowing) Act, 1939.	114
	XXIII	The Indian Soft Coke Cess Committee (Reconstruction and Incorporation) Act, 1939.	119
	XXVIII	The Medical Diplomas Act, 1939.	120
	XXIX	The Indian Tariff (Fourth Amendment) Act, 1939.	Not reprinted.
	XXX	The Commercial Documents Evidence Act, 1939.	122
	XXXVI	The Indian Air Force Volunteer Reserve (Discipline) Act, 1939.	125
1940	V	The Trade Marks Act, 1940.	127
	X	The Arbitration Act, 1940.	169
	XII	The Income Tax Law Amendment Act, 1940.	Not printed.
	XV	The Excess Profits Tax Act, 1940.	187
	XVI	The Indian Finance Act, 1940.	226
	XVIII	The National Service (European British Subjects) Act, 1940.	227
	XXIII	The Drugs Act, 1940.	238
	XXVII	The Agricultural Produce Cess Act, 1940.	258
		*The Indian Finance (No. 2) Act, 1940.	261

*Governor General's Act. No number was given.

CHRONOLOGICAL TABLE OF THE UNREPEALED CENTRAL ACTS,
1939-1947—*Contd.*

1	2	3	4
Year.	No.	Short title.	Page.
1941	I	The Insurance Deposits (Temporary Reduction) Act, 1941.	263
	II	The Indian Merchandise Marks (Amendment) Act, 1941.	Not printed.
	IV	The Berar Laws Act, 1941.	266
	V	The Assam Rifles Act, 1941.	275
	VII	The Indian Finance Act, 1941.	281
	XII	The Delhi (Restriction of Uses of Land) Act, 1941.	233
	XIX	The Mines Maternity Benefit Act, 1941.	291
	XX	The Professions Tax Limitation Act, 1941.	297
	XXI	The Federal Court Act, 1941.	299
	XXII	The Indian Merchant Shipping (Amendment) Act, 1941.	Not printed.
	XXIII	The Indian Income-tax (Amendment) Act, 1941.	Not printed.
	XXIV	The Excess Profits Tax (Second Amendment) Act, 1941.	Not printed.
	XXV	The Railways (Local Authorities' Taxation) Act, 1941.	300
1942	VI	The Multi-Unit Co-operative Societies Act, 1942.	301
	VII	The Coffee Market Expansion Act, 1942.	303
	XII	The Indian Finance Act, 1942.	321
	XIII	The Agricultural Produce (Grading and Marking) (Amendment) Act, 1942.	Not printed.
	XIV	The Indian Tolls (Army) (Amendment) Act, 1942.	Not printed.
	XVIII	The Weekly Holidays Act, 1942.	329
	XIX	The Industrial Statistics Act, 1942.	332
	XXVI	The Federal Court (Supplemental Powers) Act, 1942.	335
1943	VIII	The Indian Finance Act, 1943.	336
	IX	The Reciprocity Act, 1943.	342
	XIII	The Delhi Muslim Wakfs Act, 1943.	344

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1939-1947—*Contd.*

1 Year.	2 No	3 Short title.	4 Page.
1943	XXIII	The War Injuries (Compensation Insurance) Act, 1943.	371
1944	I	The Central Excises and Salt Act, 1914	384
	X	The Indian Coconut Committee Act, 1944.	403
	XVIII	The Public Debt (Central Government) Act, 1944.	412
		*The Indian Finance Act, 1944.	420
		*The Indian Finance Act, 1945.	428
1945	III	The Factories (Amendment) Act, 1945.	Not printed.
1946	I	The Workmen's Compensation (Amendment) Act, 1946.	Not printed.
	II	The Indian Mines (Amendment) Act, 1946.	Not printed.
	III	The Code of Criminal Procedure (Amendment) Act, 1946.	Not printed.
	IV	The Code of Criminal Procedure (Second Amendment) Act, 1946.	Not printed.
	V	The Professions Tax Limitation (Amendment) Act, 1946.	Not printed.
	VI	The Insurance (Amendment) Act, 1946.	Not printed.
	VII	The Indian Finance Act, 1946.	434
	VIII	The Indian Income-tax (Amendment) Act, 1946.	Not printed.
	IX	The Indian Oilseeds Committee Act, 1946.	444
	X	The Factories (Amendment) Act, 1946.	Not printed.
	XI	The Provident Funds (Amendment) Act, 1946.	Not printed.
	XII	The Trade Marks (Amendment) Act, 1946.	Not printed.
	XIII	The Indian Companies (Amendment) Act, 1946.	Not printed.
	XIV	The Railway Companies (Substitution of Parties in Civil Proceedings) Act, 1946.	454
	XV	The Indian Coconut Committee (Amendment) Act, 1946.	Not printed.

*Governor General's Act. No number was given.

CHRONOLOGICAL TABLE OF THE UNREPEALED CENTRAL ACTS,
1939-1947—*Contd.*

1 Year.	2 No.	3 Short title.	4 Page.
1946	XVI	The Protective Duties Continuation Act, 1946.	Not printed.
	XVII	The Protective Duties Act, 1946.	455
	XVIII	The Indian Soldiers (Litigation Amendment) Act, 1946.	Not printed.
	XIX	The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946.	456
	XX	The Industrial Employment (Standing Orders) Act, 1946.	457
	XXI	The Merchant Seamen (Litigation) Act 1946.	462
	XXII	The Mica Mines Labour Welfare Fund Act, 1946.	465
	XXIII	The Reserve Bank of India (Amendment) Act, 1946.	Not printed.
	XXIV	The Essential Supplies (Temporary Powers) Act, 1946.	468
	XXV	The Delhi Special Police Establishment Act, 1946.	473
	XXVI	The Special Tribunals (Supplementary Provisions) Act, 1946.	475
	XXVII	The Banking Companies (Restriction of Branches) Act, 1946.	476
	XXVIII	The Hindu Marriage Disabilities Removal Act, 1946.	477
	XXIX	The Indian Tea Control (Amendment) Act, 1946.	Not printed.
	XXX	The Registration of Transferred Companies (Amendment) Act, 1946.	Not printed.
	XXXI	The Foreigners Act, 1946.	478
1947	I	The Criminal Tribes (Amendment) Act 1947.	Not printed.
	II	The Prevention of Corruption Act, 1947.	485
	III	The Indian Extradition (Amendment) Act, 1947.	Not printed.
	IV	The Coffee Market Expansion (Amendment) Act, 1947.	Not printed.

CHRONOLOGICAL TABLE OF THE UNREPEALED CENTRAL ACT,
1939-1947—*Contd.*

1 Year.	2 No.	3 Short title.	4 Page.
1947	V	The Factories (Amendment) Act, 1947.	Not printed.
	VI	The Indian Railways (Amendment) Act, 1947.	Not printed.
	VII	The Foreign Exchange Regulation Act, 1947.	488
	VIII	The Indian Navy (Discipline) (Amendment) Act, 1947.	Not printed.
	IX	The Sugar (Temporary Excise Duty) Act, 1947.	504
	X	The Explosives (Temporary Provisions) Act, 1947.	505
	XI	The Reserve Bank of India (Amendment) Act, 1947.	Not printed.
	XII	The Railways (Transport of Goods) Act, 1947.	507
	XIII	The Delhi Muslim Wakfs (Amendment) Act, 1947.	Not printed.
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	XX	The Indian Finance Act, 1947.	550
	XXI	The Business Profits Tax Act, 1947.	557
	XXII	The Income-tax and Excess Profits Tax (Amendment) Act, 1947.	Not printed.
	XXIII	The Reserve Bank of India (Second Amendment) Act, 1947.	Not printed.
	XXIV	The Rubber (Production and Marketing) Act, 1947.	573

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1	2	3	4
Year.	No.	Short title.	Page.
1947	XXV	The Indian Tariff (Amendment) Act, 1947.	Not printed.
	XXVI	The Control of Shipping Act, 1947.	584
	XXVII	The Motor Vehicles (Amendment) Act, 1947.	Not printed.
	XXVIII	The Indian Coinage (Amendment) Act, 1947.	Not printed.
	XXIX	The Capital Issues (Continuance of Control) Act, 1947.	588
	XXX	The Taxation on Income (Investigation Commission) Act, 1947.	591
	XXXI	The Antiquities (Export Control) Act, 1947.	598
	XXXII	The Coal Mines Labour Welfare Fund Act, 1947.	599
	XXXIII	The Negotiable Instruments (Amendment) Act, 1947.	Not printed.
	XXXIV	The Indian Boilers (Amendment) Act, 1947.	Not printed.
	XXXV	The Panth Piploda Laws (Amendment) Act, 1947.	Not printed.
	XXXVI	The Indian Medical Council (Amendment) Act, 1947.	Not printed.
	XXXVII	The Indian Patents and Designs (Extension of Time) Amendment Act, 1947.	Not printed.
	XXXVIII	The Foreigners (Amendment) Act, 1947.	Not printed.
	XXXIX	The Press (Special Powers) Act, 1947.	607
	XL	The Foreign Exchange Regulation (Amendment) Act, 1947.	Not printed.
	XLI	The Indian Merchant Shipping (Amendment) Act, 1947.	Not printed.
	XLII	The Indian Finance (Supplementary) Act, 1947.	Not printed.
	XLIII	The United Nations (Security Council) Act, 1947.	610
	XLIV	The Income-tax and Business Profits Tax (Amendment) Act, 1947.	Not printed.

CHRONOLOGICAL TABLE OF THE UNREPEALED CENTRAL ACTS,
1939-1947—*Contd.*

1 Year.	2 No.	3 Short title.	4 Page.
1947	XLV	The Indian Trade Unions (Amendment) Act, 1947.	Not printed.
	XLVI	The United Nations (Privileges and Immunities) Act, 1947.	611
	XLVII	The Extra-Provincial Jurisdiction Act, 1947.	617
	XLVIII	The Indian Nursing Council Act, 1947.	619
	XLIX	The Delhi Premises (Requisition and Eviction) Act, 1947.	628
	L	The Delhi and Ajmer-Merwara Rent Control (Amendment) Act, 1947.	Not printed.
	LI	The Indian Cotton Cess (Amendment) Act, 1947.	Not printed.
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THE MOTOR VEHICLES ACT, 1939.

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MISCELLANEOUS.

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THE SECOND SCHEDULE	I. Diseases and Disabilities absolutely disqualifying a person for obtaining a Licence to drive a motor vehicle. II. Diseases and disabilities absolutely disqualifying a person for obtaining a Licence to drive a public service vehicle.
THE THIRD SCHEDULE	Test of competence to drive
THE FOURTH SCHEDULE	Authorities entitled to grant Licences to drive and to Register Motor Vehicles, the property or for the time being under the exclusive control of the Central Government, and Registration Marks for such vehicles.
THE FIFTH SCHEDULE	Offences on conviction of which an Endorsement shall be made on the Licence of the person affected.
THE SIXTH SCHEDULE	Registration Marks.
THE SEVENTH SCHEDULE	Maximum Axle Weights permissible for Transport vehicles.
THE EIGHTH SCHEDULE	Limits of Speed for Motor Vehicles.
THE NINTH SCHEDULE	Traffic Signs.
THE TENTH SCHEDULE	Driving Regulations.
THE ELEVENTH SCHEDULE	Signals.

ACT No. IV of 1939.¹

[16th February 1939.]

An Act to consolidate and amend the law relating to
motor vehicles.

WHEREAS it is expedient to consolidate and amend the law relating to motor vehicles in the Provinces of India: It is

(3) Chapter VIII shall not have effect in the territories which immediately before the 1st November 1956, were comprised in the State of Travancore-Cochin to which this Act extends until the Central Government, by notification in the Official Gazette, so directs, and notwithstanding the repeal by section 6 of the Part B States (Laws) Act, 1951, of any law in force in those territories, corresponding to the Motor Vehicles Act, 1939, the corresponding law, in so far as it requires or relates to the insurance of motor vehicles against third party risks, shall, until Chapter VIII takes effect in those territories have effect as if enacted in this Act.

Short title,
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commence-
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or Definitions

C.A.III/51

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A.O.3/56.

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(2) "certificate of registration" means the certificate issued by a competent authority to the effect that a motor vehicle has

¹ For the Statement of Objects and Reasons, see Gazette of India, 1938, Pt. V. p. 114: for Report of the Select Committee, see *ibid.*, p. 187.

This Act has been applied to—

All excluded areas in Assam by Assam Government Notification No. 2606-G.S., dated 14th August, 1939;

The Darjeeling district subject to modifications and exceptions, see Notification No. 1771-PL, dated 15th August, 1939, Calcutta Gazette, dated 24th August, 1939.

S. 44(2) of this Act has been amended in its application to the Andaman and Nicobar Islands by s. 2 of the Motor Vehicles (Amendment) Regulation, 1940 (4 of 1940).

The Act as applied to Railway Lands in Rajputana came into force on 13th January 1944, see Notification No. P/1-86, dated 13th January 1944, Gazette of India, 1944, Pt. I-A, p. 10.

² Subs. by the A.O. 1948 for "British India".

³ Subs. by the A.O. 1948 for "the whole of British India."

⁴ Ins. by s. 2 of the Motor Vehicles (Amendment) Act, 1939 (40 of 1939) (with effect from 1st July, 1939).

⁵ Subs. for "1943" by s. 2 of the Motor Vehicles (Amendment) Act, 1943 (1 of 1943).

“(2A) ‘Commission’ means the Inter-State Transport Commission constituted under section 63A;

(2B) ‘conductor’, in relation to a stage carriage, means a person engaged in collecting fares from passengers regulating their entrance, into, or exit from, the stage carriage and performing such other functions as may be prescribed;

(2C) ‘conductor’s licence’ means the document issued by a competent authority under Chapter IIA authorising the person specified therein to act as a conductor.”
~~contract, and the passengers may pay separate fares;~~

Explanation.—“Contract carriage” does not include a motor vehicle, possession of which has been temporarily transferred in accordance with an express agreement of hire for use as a private vehicle and which is used in accordance with the terms of such agreement;

(4) “delivery van” means any goods vehicle the registered laden weight of which does not exceed 5,000 pounds avoirdupois;

“(5A) ‘driving licence’ means the document issued by a competent authority under Chapter II authorising the person specified therein to drive a motor vehicle or a motor vehicle of any specified class or description;”;

C.A. 156
f

(7) “goods” includes live-stock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle;

(8) “goods vehicle” means any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the

“(9) ‘heavy motor vehicle’ means a transport vehicle or omnibus the registered laden weight of which, or a motor car or tractor the unladen weight of which, exceeds 18,000 pounds avoirdupois;”;

ceeds 14,000 pounds avoirdupois;
 1A “India” means the territory to which this Act extends. 11/51

(10) “invalid carriage” means a motor vehicle the unladen weight of which does not exceed five hundredweights, specially designed and constructed, and not merely adapted, for the use of a person suffering from some physical defect or disability, and used solely by or for such a person;

(11) “licence” means the document issued by a competent authority authorising the person specified therein to drive a motor vehicle or a motor vehicle of any specified class or description;

(Chapter I.—Preliminary.)

(12) "licensing authority" means an authority empowered to grant licences appointed by the Provincial Government

"(13) 'light motor vehicle' means a transport vehicle or omnibus the registered laden weight of which, or a motor car or a tractor the unladen weight of which, does not exceed 6,000 pounds avoirdupois;

(14) 'medium motor vehicle' means any motor vehicle other than a motor cycle, invalid carriage, light motor vehicle, heavy motor vehicle or road roller;";
~~exceeds 10,000 pounds avoirdupois, but does not include a road-roller;~~

(15) "motor cab" means any motor vehicle constructed, adapted or used to carry not more than six passengers excluding the driver, for hire or reward;

(16) "motor car" means any motor vehicle other than a transport vehicle, locomotive, road-roller, tractor, motor cycle or invalid carriage; ~~omnibus~~ 10/156

(17) "motor cycle" means a motor vehicle, other than an invalid carriage, with less than four wheels the unladen weight of which, inclusive of any side-car attached to the vehicle, does not exceed 900 pounds avoirdupois;

(18) "motor vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source

"(18A) 'omnibus' means any motor vehicle constructed or adapted to carry more than six persons excluding the driver;"; CA

Enclosed Premises

(19) "owner" means, where the person in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire purchase agreement, the person in possession of the vehicle under that agreement; ~~the Commission or~~

(20) "permit" means the document issued by a ~~State~~ Provincial or Regional Transport Authority authorising the use of a Transport vehicle as a contract carriage, or stage carriage, or authorising the owner as a private carrier or public carrier to use such vehicle;

(21) "prescribed" means prescribed by rules made under this Act;

(22) "private carrier" means an owner of a transport vehicle other than a public carrier who uses that vehicle solely for the carriage of goods which are his property or the carriage of which is necessary for the purposes of his business not being a business of providing transport, or who uses the vehicle for any of the purposes specified in subsection (2) of section 42;

(Chapter I.—Preliminary)

(23) "public carrier" means an owner of a transport vehicle who transports or undertakes to transport goods, or any class of goods, for another person at any time and in any public place for hire or reward, whether in pursuance of the terms of a contract or agreement or otherwise and includes any person, body, association or company engaged in the business of carrying the goods of persons associated with that person, body, association or company for the purpose of having their goods transported;

(24) "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;

(25) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and includes a motor cab, contract carriage.

"(26) 'registered axle weight' means, in respect of the axle of any vehicle, the axle weight certified and registered by the registering authority as permissible for that axle;"

(27) "registered laden weight" means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle;

(28) "registering authority" means an authority empowered to register motor vehicles under Chapter III;

(29) "stage carriage" means a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;

(30) "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion) ~~the unladen weight of which does not exceed 16,000 pounds avoirdupois; but excludes a road-roller;~~

(31) "traffic signs" includes all signals, warning sign posts, direction posts, or other devices for the information, guidance or direction of drivers of motor vehicles;

(32) "trailer" means any vehicle other than a side-car drawn or intended to be drawn by a motor vehicle;

"(33) 'transport vehicle' means a public service vehicle or a goods vehicle;"

(Chapter I,—Preliminary. Chapter II.—Licensing of Drivers of Motor Vehicles.)

- (34) "unladen weight" means the weight of a vehicle or trailer including all equipment ordinarily used with the vehicle or trailer when working, but excluding the weight of a driver or attendant; and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative part or body;
- (35) "weight" means the total weight transmitted for the time being by the wheels of a vehicle to the surface on which the vehicle rests.

CHAPTER II.

LICENSING OF DRIVERS OF MOTOR VEHICLES.

3. (1) No person shall drive a motor vehicle in any public place unless he holds an effective licence issued to himself authorising him to drive the vehicle; and no person shall so drive a motor vehicle as a paid employee or shall so drive a public service vehicle unless his licence specifically entitles him so to do. *transport*

Necessity for driving licence.

(2) A ~~Provincial~~ *State* Government may prescribe the conditions subject to which sub-section (1) shall not apply to a person receiving instruction in driving a motor vehicle.

1* * * * *

4. (1) No person under the age of eighteen years shall drive a motor vehicle in any public place.

Age limit in connection with driving of motor vehicles.

(2) Subject to the provisions of section 14, no person under the age of twenty years shall drive a transport vehicle in any public place.

2* * * * *

5. No owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle.

Responsibility of owners of motor vehicles for contraventions of sections 3 & 4.

6. (1) No person shall, while he holds any licence for the time being in force, hold any other licence except a licence issued in accordance with the provisions of section 14, or a document authorising, in accordance with the rules made under section 92, the person specified therein to drive a motor vehicle.

Restrictions on the holding of licences.

¹ Sub-section (3) rep. by s. 2 of the Motor Vehicles (Amendment) Act, 1942 (20 of 1942).

² Sub-section (3) rep. by s. 3, *ibid.*

(Chapter II.—Licensing of Drivers of Motor Vehicles.)

(2) No holder of a licence shall permit it to be used by any other person.

(3) Nothing in this section shall prevent a licensing authority having the jurisdiction referred to in sub-section (1) of section 7 from adding to the classes of vehicle which the licence authorises the holder to drive.

Grant of
licence.

7. (1) Any person who is not disqualified under section 4 for driving a motor vehicle and who is not for the time being disqualified for holding or obtaining a licence may apply to the licensing authority having jurisdiction in the area in which he ordinarily resides or carries on business or, if the application is for a licence to drive as a paid employee, in which the employer resides or carries on business, for the issue to him of a licence.

(2) Every application under sub-section (1) shall be in Form A as set forth in the First Schedule, shall be signed by, or bear the thumb impression of, the applicant in two places, and shall contain the information required by the form.

(3) Where the application is for a licence to drive as a paid employee or to drive a transport vehicle, or where in any other case the licensing authority for reasons to be stated in writing so requires, the application shall be accompanied by a medical certificate in Form C, as set forth in the First Schedule, signed by a registered medical practitioner.

(4) Every application for a licence to drive as a paid employee and every application for a licence to drive a transport vehicle shall be accompanied by three clear copies of a recent photograph of the applicant.

(5) If, from the application or from the medical certificate referred to in sub-section (3), it appears that the applicant is suffering from any disease or disability specified in the Second Schedule or any other disease or disability which is likely to cause the driving by him of a motor vehicle of the class which he would be authorised by the licence applied for to drive to be a source of danger to the public or to the passengers, the licensing authority shall refuse to issue the licence:

Provided that—

- (a) a licence limited to driving an invalid carriage may be issued to the applicant, if the licensing authority is satisfied that he is fit to drive such a carriage,
- (b) the applicant may, except where he suffers from a disease or disability specified in the Second Schedule, claim to be subjected to a test of his fitness or ability to drive a motor vehicle of a particular construction or design, and, if he passes such test to the satisfaction of the licensing authority and is not otherwise disqualified, the licensing authority shall grant him a licence to drive such motor vehicle as the licensing authority may specify in the licence.

"Provided that, where the application is for a licence to drive a motor cycle or a light motor vehicle, the licensing authority shall exempt the applicant from Part I of the test specified in the Third Schedule, if the licensing authority is satisfied—

(a) that the applicant has previously held a licence to drive and that the period between the date of expiry of that licence and the date of such application does not exceed five years; or

(b) that the applicant holds a driving licence issued by a competent authority of any country outside India:";

— Provided further that where the application is for a licence to drive a motor vehicle (not being a transport vehicle) otherwise than as a paid employee, the licensing authority may exempt the applicant from ³ * * * the test specified in the Third Schedule if the applicant possesses a driving certificate issued by an automobile association re-

"(7) The test of competence to drive shall be carried out in a vehicle of the type to which the application refers, and for the purposes of Part I of the test,—

(a) a person who passes the test in driving a heavy motor vehicle shall be deemed also to have passed the test in driving any medium motor vehicle or light motor vehicle;

(b) a person who passes the test in driving a medium motor vehicle shall be deemed also to have passed the test in driving any light motor vehicle.";

vehicle shall be deemed also to have passed the test in driving any motor vehicle other than a motor cycle.

(8) When an application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his physical fitness and of his competence to drive and has paid to the authority a fee of ~~five~~ rupees, the licensing authority shall grant the applicant a licence unless the applicant is disqualified under section 4 for driving a motor vehicle or is for the time being disqualified for holding or obtaining a licence:

Provided that,—

4 * * * * *

5 * a licensing authority may issue a licence to drive a motor cycle or a ~~motor car~~ notwithstanding that it is not the

1 The brackets and letter "(a)" rep. by s. 4 of the Motor Vehicles (Amendment) Act, 1942 (20 of 1942).

2 The word "or" and clause "(b)" rep., *ibid.*

3 The words "Part I of" rep., *ibid.*

4 Clause (a) rep., *ibid.*

5 The brackets and letter "(b)" rep., *ibid.*

(Chapter II.—Licensing of Drivers of Motor Vehicles.)

(2) No holder of a licence shall permit it to be used by any other person.

(3) Nothing in this section shall prevent a licensing authority having the jurisdiction referred to in sub-section (1) of section 7 from adding to the classes of vehicle which the licence authorises the holder to drive.

Grant of
licence.

7. (1) Any person who is not disqualified under section 4 for driving a motor vehicle and who is not for the time being disqualified for holding or obtaining a licence may apply to the licensing authority having jurisdiction in the area in which he ordinarily resides or carries on business or, if the application is for a licence to drive as a paid employee, in which the employer resides or carries on business, for the issue to him of a licence.

(2) Every application under sub-section (1) shall be in Form A as set forth in the First Schedule, shall be signed by, or bear the thumb impression of, the applicant in two places, and shall contain the information required by the form.

(3) Where the application is for a licence to drive as a paid employee or to drive a transport vehicle, or where in any other case the licensing authority for reasons to be stated in writing so requires, the application shall be accompanied by a medical certificate in Form C, as set forth in the First Schedule, signed by a registered medical practitioner.

(4) Every application for a licence to drive as a paid employee and every application for a licence to drive a transport vehicle shall be accompanied by three clear copies of a recent photograph of the applicant.

(5) If, from the application or from the medical certificate referred to in sub-section (3), it appears that the applicant is suffering from any disease or disability specified in the Second Schedule or any other disease or disability which is likely to cause the driving by him of a motor vehicle of the class which he would be authorised by the licence applied for to drive to be a source of danger to the public or to the passengers, the licensing authority shall refuse to issue the licence:

Provided that—

- (a) a licence limited to driving an invalid carriage may be issued to the applicant, if the licensing authority is satisfied that he is fit to drive such a carriage,
- (b) the applicant may, except where he suffers from a disease or disability specified in the Second Schedule, claim to be subjected to a test of his fitness or ability to drive a motor vehicle of a particular construction or design, and, if he passes such test to the satisfaction of the licensing authority and is not otherwise disqualified, the licensing authority shall grant him a licence to drive such motor vehicle as the licensing authority may specify in the licence.

"Provided that, where the application is for a licence to drive a motor cycle or a light motor vehicle, the licensing authority shall exempt the applicant from Part I of the test specified in the Third Schedule, if the licensing authority is satisfied—

(a) that the applicant has previously held a licence to drive and that the period between the date of expiry of that licence and the date of such application does not exceed five years; or

(b) that the applicant holds a driving licence issued by a competent authority of any country outside India:"

~~Provided further that where the application is for a licence to drive a motor vehicle (not being a transport vehicle) otherwise than as a paid employee, the licensing authority may exempt the applicant from the test specified in the Third Schedule if the applicant possesses a driving certificate issued by an automobile association re-~~

"(7) The test of competence to drive shall be carried out in a vehicle of the type to which the application refers, and for the purposes of Part I of the test,—

(a) a person who passes the test in driving a heavy motor vehicle shall be deemed also to have passed the test in driving any medium motor vehicle or light motor vehicle;

(b) a person who passes the test in driving a medium motor vehicle shall be deemed also to have passed the test in driving any light motor vehicle."

~~vehicle shall be deemed also to have passed the test in driving any motor vehicle other than a motor cycle.~~

(8) When an application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his physical fitness and of his competence to drive and has paid to the authority a fee of five rupees, the licensing authority shall grant the applicant a licence unless the applicant is disqualified under section 4 for driving a motor vehicle or is for the time being disqualified for holding or obtaining a licence:

Provided that,—

* * * * *

⁵ * a licensing authority may issue a licence to drive a motor cycle or a motor car notwithstanding that it is not the

¹ The brackets and letter "(a)" rep. by s. 4 of the Motor Vehicles (Amendment) Act, 1942 (20 of 1942).

² The word "or" and clause "(b)" rep., *ibid.*

³ The words "Part I of" rep., *ibid.*

⁴ Clause (a) rep., *ibid.*

⁵ The brackets and letter "(b)" rep., *ibid.*

“Provided further that the licensing authority shall not issue a new driving licence to the applicant, if he had previously held a driving licence issued under this Act, unless it is satisfied that there is good reason for his inability to obtain a duplicate copy of his former licence.”

8. (1) Every licence, except a licence issued under section 7, shall be in Form D as set forth in the First Schedule and shall have affixed thereto one of the signatures or thumb impressions given on the form of application for the licence and, in the case of a licence to drive as a paid employee or to drive a transport vehicle, one of the photographs referred to in sub-section (4) of section 7.

(2) A licence shall specify whether the holder is entitled to drive as a paid employee and whether he is entitled to drive a public service vehicle and shall further be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:—

- | | |
|-----------------|---|
| (a) mo | “ (b) invalid carriage, |
| (b) mo | (c) light motor vehicle, |
| (c) mot | (d) medium motor vehicle, |
| (d) del | (e) heavy motor vehicle, |
| (e) ligh | (f) road roller, |
| (f) hea | (g) motor vehicle of a specified description.”. |
| (g) loc | |
| (h) tra | |
| (i) road-roller | |

“8A. (1) Any person holding a driving licence issued under this Chapter who is not for the time being disqualified for holding or obtaining a driving licence may apply in Form A, as set forth in the First Schedule, to the licensing authority having jurisdiction in the area in which he ordinarily resides or carries on business or, if the application relates to a licence to drive as a paid employee, in which the employer resides or carries on business, for the addition of another class of motor vehicle to the licence. Additions to driving licence.

(2) The provisions of section 7 shall apply to an application under this section as if the application were for the grant of a licence under that section to drive the class of motor vehicle which the applicant desires to be added to his licence:

Provided that the provisions of sub-sections (3) and (4) of that section shall not apply where the applicant is the holder of a licence to drive as a paid employee or to drive a transport vehicle.

(3) No fee other than a fee for the test of competence to drive shall be charged for an addition to a driving licence under this section.”

(Chapter II.—Licensing of Drivers of Motor Vehicles.)

- (a) provide that a specification entitling the holder of a licence to drive a public service vehicle shall be made in the licence only by or under the authority of the Regional Transport Authority constituted under Chapter IV,
- (b) regulate the submission of applications for such licences to the said authority, ~~or~~
- (c) require as a condition of its validity in a province that a licence entitling the holder to drive a public service vehicle shall be countersigned by a prescribed authority in the Province.

(4) If the Central Government is satisfied that licences issued in [the Provinces] under this Act are not effective in any ~~any~~ ¹ ~~any~~ ² ~~any~~ ³ ~~any~~ ⁴ ~~any~~ ⁵ ~~any~~ ⁶ ~~any~~ ⁷ ~~any~~ ⁸ ~~any~~ ⁹ ~~any~~ ¹⁰ ~~any~~ ¹¹ ~~any~~ ¹² ~~any~~ ¹³ ~~any~~ ¹⁴ ~~any~~ ¹⁵ ~~any~~ ¹⁶ ~~any~~ ¹⁷ ~~any~~ ¹⁸ ~~any~~ ¹⁹ ~~any~~ ²⁰ ~~any~~ ²¹ ~~any~~ ²² ~~any~~ ²³ ~~any~~ ²⁴ ~~any~~ ²⁵ ~~any~~ ²⁶ ~~any~~ ²⁷ ~~any~~ ²⁸ ~~any~~ ²⁹ ~~any~~ ³⁰ ~~any~~ ³¹ ~~any~~ ³² ~~any~~ ³³ ~~any~~ ³⁴ ~~any~~ ³⁵ ~~any~~ ³⁶ ~~any~~ ³⁷ ~~any~~ ³⁸ ~~any~~ ³⁹ ~~any~~ ⁴⁰ ~~any~~ ⁴¹ ~~any~~ ⁴² ~~any~~ ⁴³ ~~any~~ ⁴⁴ ~~any~~ ⁴⁵ ~~any~~ ⁴⁶ ~~any~~ ⁴⁷ ~~any~~ ⁴⁸ ~~any~~ ⁴⁹ ~~any~~ ⁵⁰ ~~any~~ ⁵¹ ~~any~~ ⁵² ~~any~~ ⁵³ ~~any~~ ⁵⁴ ~~any~~ ⁵⁵ ~~any~~ ⁵⁶ ~~any~~ ⁵⁷ ~~any~~ ⁵⁸ ~~any~~ ⁵⁹ ~~any~~ ⁶⁰ ~~any~~ ⁶¹ ~~any~~ ⁶² ~~any~~ ⁶³ ~~any~~ ⁶⁴ ~~any~~ ⁶⁵ ~~any~~ ⁶⁶ ~~any~~ ⁶⁷ ~~any~~ ⁶⁸ ~~any~~ ⁶⁹ ~~any~~ ⁷⁰ ~~any~~ ⁷¹ ~~any~~ ⁷² ~~any~~ ⁷³ ~~any~~ ⁷⁴ ~~any~~ ⁷⁵ ~~any~~ ⁷⁶ ~~any~~ ⁷⁷ ~~any~~ ⁷⁸ ~~any~~ ⁷⁹ ~~any~~ ⁸⁰ 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(Chapter II.—Licensing of Drivers of Motor Vehicles.)

Revocation of licence on grounds of disease or disability. *any* 12. Notwithstanding anything contained in the foregoing sections, a licensing authority may at any time revoke a licence issued by it, or

may req
holder to
forth in
tion 7, in
the hold

(d) the words ~~and~~ where the authority revoking a driving licence is not the authority which issued the same, it shall intimate the fact of revocation to the authority which issued that licence¹ shall be inserted at the end.

to drive a motor vehicle. ~~(See Slip)~~

~~(a) licensing authority refuses to issue or renew or revokes any driving licence~~
~~it refuses to add a class of motor vehicle to any driving licence~~

Orders refusing or revoking licences and appeals thereon.

13. (1) Where the licensing authority refuses to issue or revokes or refuses to renew any licence, it shall do so by an order communicated to the applicant or the holder, as the case may be, giving the reasons in writing.

(2) Any person aggrieved by an order made under sub-section (1) may, within thirty days of the service on him of the order, appeal to the prescribed authority which shall decide the appeal after giving such person and the authority making the order an opportunity of being heard and the decision of the appellate authority shall be binding on the authority making the order.”

(3) The order of a licensing authority shall, unless the appellate authority, conditionally or unconditionally, directs otherwise, be in force pending the disposal of an appeal under sub-section (2).

Licences to drive motor vehicles, the property of the Central Government.

14. (1) The authority specified in Part A of the Fourth Schedule may grant licences, valid throughout [the Provinces], to persons who have completed their eighteenth year to drive motor vehicles which are the property [or for the time being under the exclusive control] of the Central Government. ~~and are used for club purposes unconnected with any commercial enterprise.~~ (19/56)

(2) A licence issued under this section shall specify the class or classes of vehicle which the holder is entitled to drive and the period for which he is so entitled.

(3) A licence issued under this section shall not entitle the holder to drive any motor vehicle except a motor vehicle which is the property [or for the time being under the exclusive control] of the Central Government.

(4) The authority issuing any licence under this section shall at the request of any Provincial Government furnish such information respecting any person to whom a licence is issued as that Government may at any time require.

Power of licensing authority to disqualify for holding a licence.

15. (1) If a licensing authority is satisfied after giving him an opportunity of being heard that any person—

(a) is a habitual criminal or a habitual drunkard, or

¹ Subs. by the A.O. 1948 for “British India”.

² Ins. by s. 5 of the Motor Vehicles (Amendment) Act, 1942 (20 of 1942).

(Chapter II.—Licensing of Drivers of Motor Vehicles.)

- (b) is using or has used a motor vehicle in the commission of a cognisable offence, or
- (c) has by his previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public,

it may, for reasons to be recorded in writing, make an order disqualifying that person for a specified period for holding or obtaining a licence.

(2) Upon the issue of any such order a person affected, if he is the holder of a licence, shall forthwith surrender his licence to the licensing authority making the order, if the licence has not already been surrendered, and the licensing authority shall—

- (a) if the licence is a licence issued under this Act, keep it until the disqualification has expired or has been removed, or
- (b) if it is not a licence issued under this Act, endorse the disqualification upon it and send it to the licensing authority by which it was issued.

(3) Any person aggrieved by an order made by a licensing authority under this section may, within thirty days of the receipt of the order, appeal to the prescribed authority, and such appellate authority shall give notice to the licensing authority and hear either party if so required by that party and may make such inquiry into the matter as it thinks fit. An order made by any such appellate authority shall be final.

16. (7) A Regional Transport Authority constituted under Chapter IV may for reasons to be recorded in writing and subject to any prescribed conditions declare any person disqualified, for a specified period, for holding or obtaining a licence to drive a ~~public service~~ vehicle in the ~~provinces~~. ~~State~~ *transp. v. p.* Power of Regional Transport Authority to disqualify.

(2) Any person aggrieved by an order of a Regional Transport Authority made under sub-section (7) may within thirty days of the receipt of intimation of such order appeal against the order to the prescribed authority.

17. (7) Where a person is convicted of an offence under this Act, or of an offence in the commission of which a motor vehicle was used, the Court by which such person is convicted may, subject to the provisions of this section, in addition to imposing any other punishment authorised by law, declare the person so convicted to be disqualified, for such period as the Court may specify, for holding any licence or for holding a licence to drive a particular class or description of vehicle. Power of Court to disqualify. *Driving*

(2) A Court shall not order the disqualification of an offender convicted for the first or second time of an offence punishable under section 115.

(3) A Court shall order the disqualification of an offender convicted of an offence punishable under section 117, and such disqualification shall be for a period of not less than six months.

(Chapter II.—Licensing of Drivers of Motor Vehicles.)

(4) A Court shall order the disqualification of an offender convicted of an offence against the provisions of clause (c) of sub-section (1) of section 87 or of section 89, and such disqualification shall be for a period of not less than one month.

(5) A Court shall, unless for special reasons to be recorded in writing it thinks fit to order otherwise, order the disqualification of an offender—

(a) who having been convicted of an offence punishable under section 116 is again convicted of an offence punishable under that section,

(b) who is convicted of an offence punishable under section 120,

or

(c) who is convicted of an offence punishable under section 123:

Provided that the period of disqualification shall not exceed, in the cases referred to in clauses (a) and (b), two years, or, in the case referred to in clause (c), one year.

(6) A Court ordering the disqualification of an offender convicted of an offence punishable under section 116 may direct that the offender shall, whether he has previously passed the test of competence to drive specified in the Third Schedule or not, remain disqualified until he has subsequent to the making of the order of disqualification passed that test to the satisfaction of the licensing authority.

(7) The Court to which an appeal lies from any conviction of an offence of the nature specified in sub-section (1) may set aside or vary any order of disqualification made by the Court below, and the Court to which appeals ordinarily lie from any Court may set aside or vary any order of disqualification made by that Court, notwithstanding that no appeal lies against the conviction in connection with which such order was made.

Effect of
disqualifica-
tion order.

18. (1) A person in respect of whom any disqualification order is made shall be debarred to the extent and for the period specified in such order from holding or obtaining a licence and the licence, if any, held by such person at the date of the order shall cease to be effective during such period.

(2) The operation of a disqualification order made under section 17 shall not be suspended or postponed while an appeal is pending against such order or against the conviction as a result of which such order is made, unless the appellate Court so directs.

(3) Any person in respect of whom any disqualification order has been made may at any time after the expiry of six months from the date of the order apply to the Court or other authority by which the order was made, to remove the disqualification; and the Court or authority, as the case may be, may, having regard to all the circumstances, either remove or vary the order of disqualification:

(Chapter II.—Licensing of Drivers of Motor Vehicles.)

Provided that where an application has been made under this section a second application thereunder shall not be entertained before the expiry of a further period of three months.

19. (1) The Court or authority making an order of disqualification shall endorse or cause to be endorsed upon the licence, if any, held by the person disqualified particulars of the order of disqualification and of any conviction of an offence in respect of which an order of disqualification is made; and particulars of any removal or variation of an order of disqualification made under sub-section (3) of section 18 shall be similarly so endorsed. Endorsements.

(2) A Court by which any person is convicted of an offence specified in the Fifth Schedule shall, whether or not an order of disqualification is made in respect of such conviction, endorse or cause to be endorsed particulars of such conviction on any licence held by the person convicted.

(3) Any person accused of an offence specified in the Fifth Schedule shall when attending the Court bring with him his licence if it is in his possession.

20. (1) An endorsement on any licence shall be transferred to any new or duplicate licence obtained by the holder thereof until the holder becomes entitled under the provisions of this section to have a licence issued to him free from endorsement. Transfer of endorsement and issue of licence free from endorsement.

(2) Where a licence is required to be endorsed and the licence is at the time not in the possession of the Court or authority by which the endorsement is to be made then—

- (a) if the person in respect of whom the endorsement is to be made is at the time the holder of a licence, he shall produce the licence to the Court or authority within five days, or such longer time as the Court or authority may fix, or Driving
- (b) if, not being then the holder of a licence, he subsequently obtains a licence, he shall within five days after obtaining the licence produce it to the Court or authority;

and if the licence is not produced within the time specified it shall on the expiration of such time be of no effect until it is produced for the purpose of endorsement.

(3) A person whose licence has been endorsed shall, if during a continuous period of three years since the last endorsement was made no further order of endorsement has been made against him, be entitled, on surrendering his licence and on payment of a fee of five rupees, to receive a new licence free from all endorsements. If the endorsement was only in respect of exceeding a speed limit, he shall be entitled to have a clean licence issued on the expiration of one year from the date of the order:

(Chapter II.—Licensing of Drivers of Motor Vehicles.)

Provided that in reckoning the said period of three years and one year, respectively, any period during which the said person was disqualified for holding or obtaining a licence shall be excluded.

(4) When a licence is endorsed by or an order of endorsement is made by any Court, the Court shall send particulars of the endorsement or order, as the case may be, to the licensing authority by which the licence was last renewed and to the licensing authority which granted the licence.

(5) Where the holder of a licence is disqualified by the order of any Court for holding or obtaining a licence, the Court shall take possession of the licence and forward it to the licensing authority by which it was granted or last renewed and that authority shall keep the licence until the disqualification has expired or has been removed and the person entitled to the licence has made a demand in writing for its return to him:

Provided that, if the disqualification is limited to the driving of a motor vehicle of a particular class or description, the Court shall endorse the licence to this effect and shall send a copy of the order of disqualification to the licensing authority by which the licence was granted and shall return the licence to the holder.

(6) Where on an appeal against any conviction or order of a Court which has been endorsed on a licence, the appellate Court varies or sets aside the conviction or order, the appellate Court shall inform the licensing authority by which the licence was last renewed and the licensing authority which granted the licence, and shall amend or cause to be amended the endorsement of such conviction or order.

Power to
make rules.

21. (1) A Provincial Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the conduct of persons to whom licences to drive transport vehicles or contract carriages are issued;

Provided that no fee so fixed shall exceed two rupees;

(c) the issue of duplicate licences to replace licences lost, destroyed or mutilated, the replacement of photographs which have become obsolete, and the issue of temporary licences to persons receiving instruction in driving, and the fees to be charged therefor;

or to persons
whose driving
licences have been
surrendered

¹ Subs. by s. 6 of the Motor Vehicles (Amendment) Act, 1942 (20 of 1942) for the original clause,

(Chapter II.—*Licensing of Drivers of Motor Vehicles.*)(Chapter III.—*Registration of Motor Vehicles.*)

(d) the conditions subject to which a Regional Transport Authority may disqualify a person for holding a licence driver;

shall also be accompanied by two clear copies of a recent

“CHAPTER IIA

LICENSING OF CONDUCTORS OF STAGE CARRIAGES

21A. (1) No person shall act as a conductor of a stage carriage unless he holds an effective conductor's licence issued to him authorising him to act as such conductor; and no person shall employ or permit any person who is not so licensed to act as a conductor of a stage carriage.

Necessity for conductor's licence.

(2) A State Government may prescribe the conditions subject to which sub-section (1) shall not apply to a driver of a stage carriage performing the functions of a conductor or to a person employed to act as a conductor for a period not exceeding one month.

21B. (1) Any person who is not disqualified under sub-section (1) of section 21C and who is not for the time being disqualified for holding or obtaining a conductor's licence may apply to the licensing authority having jurisdiction in the area in which he ordinarily resides or carries on business for the issue to him of a conductor's licence.

Grant of conductor's licence.

(2) Every application under sub-section (1) shall be in such form as may be prescribed and shall be signed by, or bear the thumb impression of, the applicant in two places, and shall contain the information required by the form.

(3) Every application for a conductor's licence shall be accompanied by a medical certificate in such form as may be prescribed, signed by a registered medical practitioner and

of revocation to the authority which issued the licence.

Orders refusing, etc., conductor's licences and appeals therefrom.

21E. (1) Where a licensing authority refuses to issue or renew, or revokes any conductor's licence, it shall do so by an order communicated to the applicant or the holder, as the case may be, giving the reasons in writing for such refusal or revocation.

(2) Any person aggrieved by an order made under sub-section (1) may, within thirty days of the service on him of the order, appeal to the prescribed authority which shall decide the appeal after giving such person and the authority making the order an opportunity of being heard and the decision of the appellate authority shall be binding on the authority making the order.

(Chapter III.—Registration of Motor Vehicles.)

Section 24A

Registration
where to be
made.

23. ^{1*} Subject to the provisions of section 25 and section 39, every owner of a motor vehicle shall cause the vehicle to be registered by a registering authority in the province in which he has the residence or place of

Registration
how to be
made.

24. (1) ^{2*} Provided that where a motor vehicle is jointly owned by more persons than one, the application shall be made by one of them on behalf of all the owners and such applicant shall be deemed to be the owner of the motor vehicle for the purposes of this Act."

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Temporary
registration.or other
prescribed
authority

25. (1) of a motor vehicle
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a period

Production
of vehicle at
time of
registration.

State

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Refusal of
registration.

27. (1) If
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Effective-
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28. If
gistered

1 The
1942 (20

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3 The

"24A. (1) Where an application for registration of a motor vehicle is made under sub-section (1) of section 24 by or on behalf of any diplomatic officer or consular officer, then, notwithstanding anything contained in sub-section (2) or sub-section (3) of that section, the registering authority shall register the vehicle in such manner and in accordance with such procedure as may be provided by rules made in this behalf by the Central Government under sub-section (3) and shall assign to the vehicle for display thereon a special registration mark in accordance with the provisions contained in those rules and shall issue a certificate that the vehicle has been registered under this section; and any vehicle so registered shall not, so long as it remains the property of any diplomatic officer or consular officer, require to be registered otherwise under this Act.

(2) If any vehicle registered under this section ceases to be the property of any diplomatic officer or consular officer, the certificate of registration issued under this section shall also cease to be effective, and the provisions of section 23 shall thereupon apply.

(3) The Central Government may make rules for the registration of motor vehicles belonging to diplomatic officers and consular officers regarding the procedure to be followed by the registering authority for registering such vehicles, the form in which certificates of registration of such vehicles are to be issued, the manner in which certificates of registration are to be sent to the owners of the vehicles and the special registration marks to be assigned to such vehicles.

(4) For the purposes of this section, 'diplomatic officer' or 'consular officer' means any person who is recognised as such by the Central Government and if any question arises as to whether a person is or is not such an officer, the decision of the Central Government thereon shall be final."

not required to be registered ^{elsewhere in India} ~~in any other Province~~ and a certificate of registration issued or in force under this Act in respect of such vehicle shall be effective throughout ^{India} ~~the Provinces~~.

(2) Subject, in the case of international motor vehicle certificates issued in pursuance of ~~the International Convention relative to motor traffic concluded at Paris on the 24th day of April, 1926, [or of any convention modifying the same,]~~ to any rules made by the Central Government under section 92, and subject in any other case to the provisions of ~~section 23 and sub-section (3) and sub-section (4)~~ ^{section 23 and sub-section (3) and sub-section (4)} of this section, a motor vehicle registered by a competent authority in ~~any [Acceding State or other Indian State] or in the French or Portuguese Settlements bounded by India~~ ^{any [Acceding State or other Indian State]} ~~or in the French or Portuguese Settlements bounded by India~~ shall be

“Provided that there is in force in respect of the vehicle a certificate issued by the competent authority conforming to and containing substantially the same particulars as a certificate of registration in Form G as set forth in the First Schedule and that such certificate does not assign to the vehicle a standard of performance in any respect materially greater than that assignable or permissible under this Act or the rules made thereunder for a motor vehicle of like make and model in the State in which the vehicle is to be driven.”;

~~the vehicle shall not be used for the time being suspended or cancelled for any reason other than that of permanent removal of the vehicle from~~ ^{the vehicle shall not be used for the time being suspended or cancelled for any reason other than that of permanent removal of the vehicle from} ~~the Provinces~~.

(5) If at any time the Central Government is satisfied that motor vehicles registered in ~~the Provinces~~ under this Act are not permitted to be driven in ~~any [Acceding State or other Indian State] or French or Portuguese Settlement~~ without fresh registration in such State or Settlement or are permitted to be driven only subject to unreasonable conditions or that like conditions and requirements to those imposed under this Act (including the specification of the particulars required by Form G as set forth in the First Schedule) are not imposed in a reasonable degree upon the issue and for the continued effectiveness of certificates of registration in ~~any State or Settlement as aforesaid~~ ^{any State or Settlement as aforesaid}, the Central Government shall, by notification in the official Gazette, declare that certificates of registration generally or in respect of any particular class of motor vehicle issued in ~~any such State or Settlement~~ ^{any such State or Settlement} shall

“When a motor vehicle—

(a) registered in one State has been kept in another State, or

(b) registered in the State of Jammu and Kashmir has been kept in India,

for a period exceeding twelve months.”

³ The proviso was rep., by s. 8 of the Motor Vehicles (Amendment) Act, 1942 (20 of 1942).
⁴ Ins., *ibid*.

⁵ The words, brackets and figure “sub-section (1) of” rep. by s. 3 and Sch. II of the Repealing and Amending Act, 1945 (6 of 1945).

⁶ Subs. by the A.O. 1948 for “Indian State”.

SECTION 32.

Alteration
in motor
vehicle.

(2) Where a registering authority is of opinion that particulars relating to the colour or colours of the body, wings and front end of any class of motor vehicles registered before the commencement of the Motor Vehicles (Amendment) Act, 1956, should be entered in the certificates of registration relating such vehicles, the State Government may, by notification in the Official Gazette, require the owners of such class of motor vehicles to produce their certificates of registration before the registering authority within such time as may be specified in the notification,"

"32. (1) No owner of a motor vehicle shall so alter the vehicle that the particulars contained in the certificate of registration are no longer accurate, unless—

(a) he has given notice to the registering authority within whose jurisdiction he resides of the alteration he proposes to make; and

(b) he has obtained the approval of the registering authority to make such alteration:

Provided that it shall not be necessary to obtain such approval for making any change in the unladen weight of the motor vehicle consequent on the addition or removal of fittings or accessories, if such change does not exceed two per cent. of the weight entered in the certificate of registration.

(4) Where any alteration has been made in a motor vehicle either with the approval of the registering authority given or deemed to have been given under sub-section (2) or by reason of any change in its engine number without such approval under sub-section (3), the owner of the vehicle shall, within fourteen days of the making of the alteration, report the alteration to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that authority together with the prescribed fee in order that particulars of the alteration may be entered therein.

(5) A registering authority other than the original registering authority making any such entry shall communicate the details of the entry to the original registering authority.

32A. Where a State Government is of opinion that particulars relating to the colour or colours of the body, wings and front end of any class of motor vehicles registered before the commencement of the Motor Vehicles (Amendment) Act, 1956, should be entered in the certificates of registration relating such vehicles, the State Government may, by notification in the Official Gazette, require the owners of such class of motor vehicles to produce their certificates of registration before the registering authority within such time as may be specified in the notification,"

Power of
State Gov-
ernment to
require
the produc-
tion of certi-
ficates of
registration
in certain
cases.

of the vehicle shall, within fourteen days of the making of the alteration report the alteration to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that authority together with the prescribed fee in order that particulars of the alteration may be entered therein.

(Chapter III.—Registration of Motor Vehicles.)

jurisdiction he resides and shall forward the certificate of registration in the order that parti-

33 “(1) If any registering authority or other prescribed authority has reason to believe that any motor vehicle within its jurisdiction—

(a) is in such a condition that its use in a public place would constitute a danger to the public, or that it fails to comply with the requirements of Chapter V or of the rules made thereunder, or

(b) has been, or is being, used for hire or reward without a valid permit for being used as such,

Suspension
of registra-
tion.

the authority may, after giving the owner an opportunity of making any representation he may wish to make (by sending to the owner a notice by registered post acknowledgement due at his address entered in the certificate of registration), for reasons to be recorded in writing, suspend the certificate of registration of the vehicle—

(i) in any case falling under clause (a), until the defects are remedied to its satisfaction; and

(ii) in any case falling under clause (b), for a period not exceeding four months.”

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the registering authority, within whose jurisdiction the vehicle was when the registration was suspended, shall, if it is not the original registering authority, inform that authority of the suspension; and when the suspension has continued without interruption for a period of not less than six months, the registering authority, within whose jurisdiction the vehicle was when the registration was suspended, may, if it is the original registering authority, cancel the registration, and if it is not the original registering authority, shall forward the certificate of registration to that authority which may cancel it forthwith.

(4) The owner of a motor vehicle shall, on the demand of a registering authority or other prescribed authority which has suspended the certificate of registration of the vehicle under this section, surrender the certificate of registration and any token or card issued to authorise the use of the vehicle in a public place.

(5) A certificate of registration and any token or card surrendered under sub-section (4) shall be returned to the owner when the order suspending registration has been rescinded and not before.

34. (1) If a motor vehicle has been destroyed or has been rendered permanently incapable of use, the owner shall, within fourteen days or as soon as may be, report the fact to the registering authority within whose jurisdiction he resides and shall forward to that authority the certificate of registration of the vehicle together with any token or card issued to authorise the use of the vehicle in a public place. Cancellation of registration.

(Chapter III.—Registration of Motor Vehicles.)

(2) The registering authority shall, if it is the original registering authority, cancel the registration and the certificate of registration, or, if it is not, shall forward the report and the certificate of registration to the original registering authority and that authority shall cancel the registration and the certificate of registration.

(3) Any registering authority may order the examination of a motor vehicle within its jurisdiction by such authority as the ~~Provincial~~ ^{Indian} Government may by order appoint and, if upon such examination and after giving the owner an opportunity to make any representation he may wish to make ^{it is satisfied that the vehicle is in such a condition that its use in a public place would constitute a danger to the public and that it is beyond reasonable repair,} may cancel the registration of the vehicle.

(4) If a registering authority is satisfied ^{India} that a motor vehicle has been permanently removed out of ~~the Province~~, the registering authority shall cancel the registration.

(5) A registering authority cancelling the registration of a motor vehicle under section 33 or under this section shall communicate the fact in writing to the owner of the vehicle and the owner of the vehicle shall forthwith surrender to that authority the certificate of registration of the vehicle and any token or card issued to authorise the use of the vehicle in a public place.

(6) A registering authority making an order of cancellation under this section shall, if it is the original registering authority, cancel the certificate of registration and the entry relating to the vehicle in its records, and, if it is not the original registering authority, forward the certificate of registration to that authority, and that authority shall cancel the certificate of registration and the entry relating to the motor vehicle in its records.

(7) The expression "original registering authority" in this section and in sections 30, 31, 32 and 33 means the registering authority in whose records the registration of the vehicle is recorded.

35. (1) Any owner of a motor vehicle aggrieved by an order of refusal under section 27 to register a motor vehicle or under sub-section (7) of section 38 to issue a certificate of fitness or by an order of suspension or cancellation made under section 33 or 34 or by an order of cancellation under sub-section (3) of section 38 may, within thirty days of the date on which he has received notice of such order, appeal against the order to the prescribed authority.

(2) The appellate authority shall give notice of the appeal to the original authority and after giving opportunity to the original authority and the appellant to be heard either personally or by pleader in the appeal pass such orders as it thinks fit:

Provided that orders of the original authority shall remain in force pending the disposal of the appeal unless the appellate authority otherwise directs.

Special provisions in regard to transport vehicles.

“36. (1) Having regard to the number, nature and size of the tyres attached to the wheels of a transport vehicle, other than a motor cab, and its make and model and other relevant considerations, a State Government may, with the approval of the Central Government, by notification in the

record of registration and shall also enter in the certificate of registration of the vehicle the following particulars, namely:—

- (a) the unladen weight of the vehicle;
- (b) the number, nature and size of the tyres attached to each wheel;
- (c) the registered laden weight of the vehicle and the registered axle weights pertaining to the several axles thereof; and
- (d) if the vehicle is used or adapted to be used for the carriage of passengers solely or in addition to goods, the number of passengers for whom accommodation is provided;

and the owner of the vehicle shall have the same particulars exhibited in the prescribed manner on the vehicle.

(3) There shall not be entered in the certificate of registration of any such vehicle any laden weight of the vehicle or a registered axle weight of any of its axles in excess of that specified in the notification under sub-section (1) in relation to the make and model of the vehicle and to the number, nature and size of the tyres attached to its wheels:

Provided that where it appears to a State Government that heavier weights than those specified in the notification under sub-section (1) may be permitted in a particular locality for vehicles of a particular type, the State Government may, by order in the Official Gazette, direct that the provisions of this sub-section shall apply with such modifications as may be specified in the order.

(4) When by reason of any alteration in such vehicle, including an alteration in the number, nature or size of its tyres, the registered laden weight of the vehicle or the registered axle weight of any of its axles no longer accords with the provisions of sub-section (3), the provisions of section 32 shall apply and the registering authority shall enter in the certificate of registration of the vehicle revised registered weights which accord with the said sub-section.

(5) In order that the registered weight entered in the certificate of registration of a vehicle may be revised in accordance with the provisions of sub-section (3), the registering authority may require the owners of transport vehicles in accordance with such procedure as may be prescribed to produce the certificates of registration within such time as may be specified by the registering authority.”

(Chapter III.—Registration of Motor Vehicles.)

that the provisions of this sub-section shall apply with such modifications as may be specified in the notification.

(3) When by reason of an alteration in the number, nature or size of tyres attached to the vehicle the registered laden weight or any registered axle weight recorded in the certificate of registration no longer accords with the laden weight or the axle weight as determined in accordance with sub-section (2), the provisions of section 32 shall apply, and the registering authority shall enter in the certificate of registration a revised registered laden weight and registered axle weights.

Certificate
of fitness of
transport
vehicle.

38. (1) Subject to the provisions of section 39, a transport vehicle shall not be deemed to be validly registered for the purposes of section 22, unless it carries a certificate of fitness in Form H as set forth in the First Schedule, issued by the prescribed authority, to the effect that the vehicle complies for the time being with all the requirements of Chapter V and the rules made thereunder. Where the prescribed authority refuse

with
“(2) Subject to the provisions of sub-section (3), a certificate of fitness shall remain effective for such period, not being in any case more than two years or less than six months, as may be specified in the certificate by the prescribed authority under sub-section (1).”;

(3) The issuing authority or other prescribed authority shall

“(4) A certificate of fitness issued under this Act shall, while it remains effective, be valid throughout India, and a State Government may, by notification in the Official Gazette, declare that subject to such conditions as may be specified in the notification, certificates of fitness issued by a competent authority in the State of Jammu and Kashmir shall, while they remain effective, be valid in the State as if they were issued under this Act.”

Registration
of vehicles,
the property
of the
Central
Government.

“(5) No person shall register any motor vehicle which is the property ¹or for the time being under the exclusive control of the Central Government; and any vehicle so registered shall not, so long as it remains the property ²or under the exclusive control of the Central Government, require to be registered otherwise under this Act.

(2) A transport vehicle registered under this section shall carry a certificate of fitness in Form H as set forth in the First Schedule issued by the authority referred to in sub-section (1).

(3) An authority registering a vehicle under sub-section (1) shall assign a registration mark in accordance with the provisions contained in the Fourth Schedule and shall issue a certificate in respect of the vehicle that the vehicle has been registered under this section.

¹ Sub-section (4), rep. by s. 10 of the Motor Vehicles (Amendment) Act, 1942 (20 of 1942).

² Ins. by s. 11, *ibid.*

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(Chapter III.—Registration of Motor Vehicles.)

(4) If a vehicle registered under this section ceases to be the property ¹[or under the exclusive control] of the Central Government, the provisions of section 23 shall thereupon apply.

(5) The authority registering a vehicle under sub-section (1) shall furnish to any ~~Provincial~~ Government all such information regarding the general nature, overall dimensions, and axle weights of the vehicle as ~~the Provincial~~ Government may at any time require.

40. (1) The registration mark assigned to a trailer shall be displayed in the prescribed manner on the side of the vehicle.

Application
of Chapter
III to
trailers.

(2) No person shall drive a motor vehicle to which a trailer is or trailers are attached unless the registration mark of the motor vehicle so driven is displayed in the prescribed manner on the trailer or on the last trailer in the train, as the case may be.

41. (1) A ~~Provincial~~ ^{State} Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

Power to
make rules.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the conduct and hearing of appeals that may be preferred

“(c) the issue of certificates of registration and fitness and duplicates of such certificates to replace certificates lost, destroyed or mutilated;

(cc) the production of certificates of registration before the registering authority for the revision of entries therein of particulars relating to the registered weight or the colour or colours of the body, wings and front end of vehicles;”;

of temporary certificates of registration and marks;

(c) the manner in which registration marks and the particulars referred to in sub-section (1) of section 37, and other prescribed particulars shall be exhibited;

(f) the fees to be charged for the issue or alteration of certificates of registration, for certificates of fitness, for registration marks, and for the examination or inspection of motor vehicles, and the refund of such fees;

²[(ff) the exemption of prescribed persons or prescribed classes of persons from payment of all or any or any portion of the fees payable under this Chapter;]

(g) the forms, other than those set forth in the First Schedule, to be used for the purposes of this Chapter;

¹ Ins. by s. 11 of the Motor Vehicles (Amendment) Act, 1942 (20 of 1942).

² Ins. by s. 12, *ibid.*

(Chapter III.—Registration of Motor Vehicles. Chapter IV—
Control of Transport Vehicles.)

- (h) the communication between registering authorities of particulars of certificates of registration and by owners of vehicles registered outside the province of particulars of such vehicles and of their registration;
- (i) the particulars to be furnished by the owner of any motor vehicle to the registering authority, upon the transfer of possession of the motor vehicle under the terms of a hiring agreement;
- (j) the extension of the validity of certificates of fitness pending consideration of applications for their renewal;
- (k) the exemption from the provisions of this Chapter, and the conditions and fees for exemption, of motor vehicles in the possession of dealers;
- (l) the exemption of road-rollers ¹], graders and other vehicles designed and used solely for the construction, repair and cleansing of roads] from all or any of the provisions of this Chapter and the rules made thereunder, and the conditions governing such exemption; and the exemption of ~~delivery vans~~ from the provisions of section 38 and the conditions governing such exemption; and
- (m) any other matter which is to be or may be prescribed.

CHAPTER IV.

CONTROL OF TRANSPORT VEHICLES.

Necessity
for permits.

r the
missiones

42. (1) No owner of a transport vehicle shall use or permit the use of the vehicle in any public place, save in accordance with the conditions of a permit granted or countersigned by a Regional or Provincial Transport Authority, authorising the use of the vehicle in that place in the manner in which the vehicle is being used:

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage:

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods vehicle either when carrying passengers or not:

Provided further that a public carrier's permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) In determining, for the purposes of this Chapter, whether a transport vehicle is or is not used for the carriage of goods for hire or reward,—

¹ Ins. by s. 12 of the Motor Vehicles (Amendment) Act, 1942 (20 of 1942).

(Chapter IV.—Control of Transport Vehicles.)

- (a) the delivery or collection by or on behalf of the owner of goods sold, used or let on hire or hire-purchase in the course of any trade or business carried on by him other than the trade or business of providing transport,
- (b) the delivery or collection by or on behalf of the owner of goods which have been or which are to be subjected to a process or treatment in the course of a trade or business carried on by him, or
- (c) the carriage of goods in a transport vehicle by a manufacturer of or agent or dealer in such goods whilst the vehicle is being used for demonstration purposes,

shall not be deemed to constitute a carrying of the goods for hire or reward; but the carriage in a transport vehicle of goods by a person not being a dealer in such goods who has acquired temporary ownership of the goods for the purpose of transporting them to another place and there relinquishing ownership shall be deemed to constitute a carrying of the goods for hire or reward.

(2) Sub-section (1) shall not apply—

“(a) to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise;”;

(b) to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleansing, road watering or conservancy purposes;

(c) to any transport vehicle used solely for police, fire brigade or ambulance purposes;

(d) to any transport vehicle used solely for the conveyance of corpses;

(e) to any transport vehicle used for towing a disabled vehicle

“(ee) to any transport vehicle owned by a manufacture of automobiles and used solely for such purposes as may be approved by the Central Government;”;

(g) to any transport vehicle owned by, and used solely for the purposes of, any educational institution which is recognised by the Provincial Government or whose managing committee is a society registered under the Societies Registration Act, 1860;

(h) subject to any prescribed conditions, to any transport vehicle owned by the Government of any ~~“Acceding State or other Indian State”~~ or French or Portuguese Settlement bounded

(Chapter IV.—Control of Transport Vehicles.)

(a) in sub-section (1), for the portion commencing with the words "and after having heard the representatives of the interests affected" and ending with the words "to be applicable throughout the State or within any area or on any route within the State", the following shall be substituted, namely:—

"may, from time to time, by notification in the Official Gazette, issue directions to the State Transport Authority—

(i) regarding the fixing of fares and freights for stage carriages, contract carriages and public carriers;

(ii) regarding the prohibition or restriction, subject to such conditions as may be specified in the directions, of the conveying of long distance goods traffic generally, or of specified classes of goods, by private or public carriers;

(iii) regarding the grant of permits for alternative routes or areas, to persons in whose cases the existing permits are cancelled or the terms thereof are modified in exercise of the powers conferred by clause (b) or clause (c) of sub-section (2) of section 68F;

(iv) regarding any other matter which may appear to the State Government necessary or expedient for giving effect to any agreement entered into with the Central Government or any other State Government or the Government of any other country relating to the regulation of motor transport generally, and in particular to its co-ordination with other means of transport and the conveying of long distance goods traffic:

Provided that no such notification shall be issued unless a draft of the proposed directions is published in the Official Gazette specifying therein a date being not less than one month after such publication, on or after which the draft will be taken into consideration and any objection or suggestion which may be received has, in consultation with the State Transport Authority, been considered after giving the representatives of the interests affected an opportunity of being heard."

~~and having heard the representatives of the interests affected~~

In section 43 of Act IV of 1939, after sub-section (3) the following sub-section shall be added, namely:-

(4)(a) the State Government, may, by notification in the Andhra Pradesh Gazette, declare that it will engage in the business of road transport either throughout the State or in such areas therein or on such routes or portions thereof in the State, as may be specified in the notification.

Explanation: The power conferred by this clause may be exercised from time to time, as occasion requires.

(b) Where a notification has been issued under clause (a), the State Government, notwithstanding anything contained in section 58 or section 60, may after giving not less than three months' notice, cancel any permit granted under this Act in respect of a transport vehicle or any class of such permits, in so far as such permit or any class of such permits, in so far as such permit or class of permits relates to the area or the route specified in such notification;

Provided that where any permit (other than a permit for a spare transport vehicle) is cancelled under this clause, the holder of the permit shall be entitled to such compensation as may be prescribed, if the following conditions are fulfilled, namely:-

(i) A Permit should have been held for such vehicle for the area or route concerned both on the 10th July 1947 and on the date of the issue of the notification under clause (a).

(ii) If the permit held in respect of the vehicle on the 10th July 1947 had been granted or renewed under section 58, the period for which the permit was so granted or renewed should not have expired before the date of the issue of the notification under clause (a).

(iii) If the permit held in respect of the vehicle on the 10th July 1947 was a temporary permit irregularly issued under section 62 in a case where, but for the orders of the State Government, a permit would have been granted or renewed under section 58, a period of three years from the date of the grant of such temporary permit should not have expired before the date of the issue of the notification under clause (a).

Explanation: Where more than one temporary permit has been granted irregularly in respect of the vehicle on or after the 2nd September 1946 and on or before the 10th July 1947, the earliest of the temporary permits so granted shall be taken into account for the purposes of the foregoing paragraph.

(Chapter IV.—Control of Transport Vehicles.)

20 For section 43 of the principal Act, the following Substitution

44-A. The State Government may appoint a State Transport Commissioner; and notwithstanding anything contained in this Act, may, by notification in the Andhra Pradesh Gazette, authorise such Commissioner or any officer subordinate to him, to exercise and discharge, in lieu of any other authority prescribed by or under this Act, such powers and functions as may be specified in the notification.

M.A.XX/48.

proposed route or area

"Provided that the State Government may, by notification in the Andhra Pradesh Gazette, direct that applications for such class of permits and in such region as may be specified in the notification shall be made to the State Transport Authority.

M.A.XX/48.

or has his principal place of business.

47 (1) A Regional Transport Authority shall, in considering an application for a stage carriage permit, have regard to the following matters, namely:—

(a) the interests of the public generally;

(b) the advantages to the public of the service to be provided, including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken;

(c) the adequacy of other passenger transport services operating or likely to operate in the near future, whether by road or other means, between the places to be served;

(d) the benefit to any particular locality or localities likely to be afforded by the service;

(e) the operation by the applicant of other transport services, including those in respect of which applications from him for permits are pending;

(f) the condition of the roads included in the proposed route or area;

and shall also take into consideration any representations made by persons already providing passenger transport facilities by any means along or near the proposed route or area or by any association representing persons interested in the provision of road transport facilities recognised in this behalf by the State Government, or by any local authority or police authority within whose jurisdiction any part of the proposed route or area lies:

Provided that other conditions being equal, an application for a stage carriage permit from a co-operative society

(Chapter IV — Control of Transport Vehicles.)

Grant of
stage car-
riage per-
mits.

"48. (1) Subject to the provisions of section 47, a Regional Transport Authority may, on an application made to it under section 46, grant stage carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit:

Provided that no such permit shall be granted in respect of any route or area not specified in the application.

(2) Every stage carriage permit shall be expressed to be valid only for a specified route or routes or for a specified area.

(3) The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for a service of stage carriages of a specified description or for one or more particular stage carriages, and may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:—

(i) that the service or any specified part thereof shall be commenced with effect from a specified date;

(ii) the minimum and maximum number of daily services to be maintained in relation to any route or area generally or on specified days and occasions;

(iii) that copies of the time-table of the service or of particular stage carriages approved by the Regional Transport Authority shall be exhibited on the vehicles and at specified stands and halts on the route or within the area;

(iv) that the service shall be operated within such margins of deviation from the approved time-table as the Regional Transport Authority may from time to time specify;

(v) that within municipal limits and such other areas and places as may be prescribed, passengers or goods shall not be taken up or set down except at specified points;

(vi) the maximum number of passengers and the maximum weight of luggage that may be carried on any ~~to be carried and the charges which may be levied~~
may be specified;

48-A. Any conditions attached to a state carriage permit in pursuance of clause (d) of section 45 may, at any time, be varied, cancelled or added to by the State Transport Authority, provided that such power shall not be exercised to the pre-

Grant of contract carriage permits.

Application for contract carriage permit.

Carriage

"51. (1) Subject to the provisions of section 50, a Regional Transport Authority may, on an application made to it under section 49, grant a contract carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit:

Provided that no such permit shall be granted in respect of any area not specified in the application.

(2) The Regional Transport Authority, if it decides to grant a contract carriage permit, may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:—

Procedure Regional Transport Authority consider application for contract carriage permit.

(i) that the vehicle or vehicles shall be used only in a specified area or on a specified route or routes;

(ii) that except in accordance with specified conditions, no contract of hiring, other than an extension or modification of a subsisting contract, may be entered into outside the specified area;

(iii) the conditions subject to which goods may be carried in any contract carriage in addition to or to the exclusion of passengers;

(iv) that, in the case of motor cabs, specified fares or rates of fares shall be charged and a copy of the fare-table shall be exhibited on the vehicle;

(v) that, in the case of vehicles other than motor cabs, specified rates of hiring not exceeding specified maxima shall be charged;

(vi) that, in the case of motor cabs, a specified weight of passengers' luggage shall be carried free of charge, and that the charge, if any, for any luggage in excess thereof shall be at a specified rate;

(vii) that, in the case of motor cabs, a taxi-meter shall be fitted and maintained in proper working order, if prescribed;

(viii) that the Authority may, after giving notice of not less than one month,—

(a) vary the conditions of the permit;

(b) attach to the permit further conditions;

(ix) that the conditions of permit shall not be departed from save with the approval of the Authority;

(x) any other conditions which may be prescribed."

Power to restrict the number of contract carriages impose conditions on contract carriage permits.

Application for private carrier's permit.

(Chapter IV.—Control of Transport Vehicles.)

- (a) the type and carrying capacity of the vehicle, ~~or each of the vehicles;~~
- (b) the nature of the goods which the applicant expects normally to carry in connection with his trade or business;
- (c) the area for which the permit is required; and

53 “(1A) Subject to the provisions of sub-section (1), the Regional Transport Authority may, on an application made to it under section 52, grant a private carrier’s permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a

Application
for public
carrier’s
permit.

“54. An application for a permit to use one or more motor vehicles for the carriage of goods for hire or reward (in this Chapter referred to as a public carrier’s permit), shall, as far as may be, contain the following particulars, namely:—

r Procedure of
Regional
Transport
Authority in
considering
application
for a private
carrier’s
permit.

(a) the area or the route or routes to which the application relates;

(b) the number of vehicles it is proposed to operate in relation to each area or route and the type and seating capacity of each such vehicle;

(c) the nature of the goods it is proposed to carry;

(d) the manner in which it is claimed that a public need will be served by the vehicle;

(e) the arrangements intended to be made for the housing of the vehicles and for the storage and safe custody of the goods to be carried;

application
for public
carrier’s
permit.

(f) particulars as to whether the applicant is a co-operative society registered or deemed to have been registered under any enactment in force for the time being, or is an individual owner;

(g) such particulars as the Regional Transport Authority may require with respect to any business as a carrier of goods for hire or reward carried on by the applicant at any time before the making of the application, and of the rates charged by the applicant;

(h) particulars of any agreement, or arrangement, affecting in any material respect the provision within the region of the Regional Transport Authority of facilities for the transport of goods for hire or reward, entered into by the applicant with any other person by whom such facilities are provided, whether within or without the region;

(i) any other particulars which may be prescribed.”

"55. (1) A Regional Transport Authority shall, in considering an application for a public carrier's permit, have regard to the following matters, namely:—

Procedure
in consider-
ing applica-
tion for
public
carrier's
permit.

(a) the interests of the public generally;

(b) the advantages to the public of the service to be provided and the convenience afforded to the public by the provision of such service and the saving of time likely to be effected.

Substitution
of new
section for
section 56.

Grant of
public
carrier's
permits.

50. For section 56 of the principal Act, the following section shall be substituted, namely :—

"56. (1) Subject to the provisions of section 55, a Regional Transport Authority may, on an application made to it under section 54, grant a public carrier's permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit :

Provided that no such permit shall be granted in respect of any area or route not specified in the application.

(2) The Regional Transport Authority, if it decides to grant a public carrier's permit, may grant the permit for one or more goods vehicles of a specified description and may, subject to any rules that may be made under this Act, attach

the Regional Transport Authority such periodical returns, statistics and other information as the State Government may, from time to time, prescribe;

(vii) that the Regional Transport Authority may after giving notice of not less than one month,—

(a) vary the conditions of the permit;

(b) attach to the permit further conditions;

(viii) that the conditions of the permit shall not be departed from save with the approval of the Regional Transport Authority;

(ix) any other conditions which may be prescribed.

(3) Where there is any free zone along or contiguous to the area or route for which a public carrier's permit is granted, the Regional Transport Authority shall include in such permit, wherever possible, an authorisation to carry any goods other than those prohibited by any law for the time being in force, anywhere in that free zone.

(4) For the purposes of this section, 'free zone' means such municipal limits of a town or such other area as the State Transport Authority may, subject to any rules that may be made under section 68 and having regard to the volume of traffic in the area and other circumstances, declare to be a free zone within which goods may be carried anywhere by any motor vehicle covered by a public carrier's permit."

“(8) An application to vary the conditions of any permit, other than a temporary permit, by the inclusion of a new route or routes or a new area or, in the case of a stage carriage permit, by increasing the number of services above the specified maximum, or in the case of a contract carriage permit or a public carrier's permit, by increasing the number of vehicles covered by the permit, shall be treated as an application for the grant of a new permit :

Provided that it shall not be necessary so to treat an application made by the holder of a stage carriage permit who provides the only service on any route or in any area to increase the frequency of the service so provided, without any increase in the number of vehicles.

(9) A Regional Transport Authority may, before such date as may be specified by it in this behalf, replace any stage carriage permit, contract carriage permit or public carrier's permit granted by it before the said date by a fresh permit conforming to the provisions of section 48 or section 51 or section 56, as the case may be, and the fresh permit shall be valid for the same route or routes or the same area for which the replaced permit was valid :

Provided that no condition other than a condition which was already attached to the replaced permit or which could have been attached thereto under the law in force when that permit was granted shall be attached to the fresh permit except with the consent in writing of the holder of the permit.

(10) Notwithstanding anything contained in section 58, a permit issued under the provisions of subsection (9) shall be effective without renewal for the remainder of the period during which the replaced permit would have been so effective.”

~~58~~ (1) (a) A stage carriage permit or a contract carriage permit other than a temporary permit issued under section 62 shall be effective without renewal for such period, not less than three years and not more than five years, as the Regional Transport Authority may specify in the permit.

(b) A private carrier's permit or a public carrier's

“Provided that the application for the renewal of a permit shall be made,—

(a) in the case of a stage carriage permit or a public carrier's permit, not less than sixty days before the date of its expiry; and

(b) in any other case, not less than thirty days before the date of its expiry.”

Pro-
newal :

General con-
ditions atta-
ching to all
permits.

59.

ferable from one person to another except with the permission of the transport authority which granted the permit and shall not without such permission operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit.

(2) The holder of a permit may, with the permission of the authority by which the permit was granted, replace by another vehicle of the same nature and capacity any vehicle covered by the permit.

(3) The following shall be conditions of every permit—

(a) that the vehicle or vehicles to which the permit relates are at all times so maintained as to comply with the requirements of Chapter V and the rules made thereunder;

(b) that the vehicle or vehicles to which the permit relates are not driven at a speed exceeding the speed lawful under this Act;

(c) that any prohibition or restriction imposed and any maximum or minimum fares or freights fixed by notification made under section 43 are observed in connection with any

Insertion of
new section
59A.

General form
of permits.

58. After section 59 of the principal Act, the following section shall be inserted, namely:—

“59A. Every permit other than a temporary permit issued under section 62 shall consist of two parts, Part A of which shall be complete in itself and shall contain all the necessary particulars of the permit and the conditions attached thereto, and Part B of which shall be a summary of the permit containing such particulars as may be prescribed; and where a permit covers more than one vehicle, there shall be issued to the holder of the permit as many copies of Part B as there are vehicles authorised by the permit to be in operation at any one time.”.

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(b) if the holder of the permit uses or causes or allows a vehicle

(e) if the holder of the permit, not being a private carrier's permit, fails without reasonable cause to use the vehicle or vehicles for the purposes for which the permit was granted; or

(f) if the holder of the permit acquires the citizenship of any foreign country;”;

Provided that no permit shall be cancelled unless an opportunity has been given to the holder of the permit to submit his explanation.

100/36

GA
100/36

65 “(1A) The transport authority which granted a permit may, after giving the holder thereof an opportunity to furnish his explanation, reduce either permanently or for such period as it thinks fit, the number of vehicles or the route or area covered by the permit on any of the grounds mentioned in sub-section (1).”;

61 (1) Where the holder of a permit dies the person

“(3) Where a permit is liable to be cancelled or suspended under clause (a) or clause (b) or clause (c) of sub-section (1) and the transport authority is of opinion that having regard to the circumstances of the case, it would not be necessary or expedient so to cancel or suspend the permit if the holder of the permit agrees to pay a certain sum of money, then, notwithstanding anything contained in sub-section (1), the transport authority may, instead of cancelling or suspending the permit, as the case may be, recover from the holder of the permit, the sum of money agreed upon.”. C.A 100/56

Transfer of permit on death of holder.

mit to the person succeeding to the possession of the vehicles covered by the permit.

62. ¹ * A Regional Transport Authority may at its discretion, and without following the procedure laid down in section 57, grant permits, to be effective for a limited period not in any case to exceed four months to authorise the use of ~~temporary~~ ^{Temporary} permits.

“Provided that a temporary permit under this section shall, in no case, be granted in respect of any route or area specified in an application for the grant of a new permit under section 46 or section 54 during the pendency of the application:

Provided further that a temporary permit under this section shall, in no case, be granted more than once in respect of any route or area specified in an application for the renewal of a permit during the pendency of such application for renewal.”.

idation of
mits for
outside
on in

by the Regional Transport Authority of that other region, and a permit granted in any one ~~State~~ ^{State} shall not be valid in any other ~~pro-~~ ^{which} granted.

“Provided that a private carrier's permit, granted by the Regional Transport Authority of any one region with the approval of the State Transport Authority, for any area in any other region or regions within the same State shall be valid in that area without the counter-signature of the Regional Transport Authority of the other region or of each of the other regions concerned.”;

¹ The brackets and figure “(1)” rep. by s 14 of the Motor Vehicles (Amendment) Act, 1942 (20 of 1942).

² Sub-section (2) rep., *ibid*.

"Provided that it shall not be necessary to follow the procedure laid down in section 57 for the grant of counter-signatures of permits, where the permits granted in any one State are required to be countersigned by the State Transport Authority of another State or by the Regional Transport Authority concerned as a result of any agreement arrived at between the States.";

57. After section 63 of the principal Act, the following sections shall be inserted, namely:—

Insertion of
new sections
63A, 63B,
and 63C.

"63A. (1) The Central Government may by notification in the Official Gazette, constitute an Inter-State Transport Commission consisting of a Chairman and such other members, not being less than two, as it thinks fit to appoint for the purpose of developing, co-ordinating and regulating the operation of transport vehicles in respect of any area or route common to two or more States (hereinafter referred to as inter-State region) and performing such other functions as may be prescribed under section 63-C.

Inter-State
Transport
Commission.

(2) The Commission shall perform throughout an inter-State region all or such of the following functions as it may be authorised to do by the Central Government by notification in the Official Gazette, namely:—

(a) to prepare schemes for the development, co-ordination or regulation of the operation of transport vehicles and in particular of goods vehicles in an inter-State region;

(b) to settle all disputes and decide all matters on which differences of opinion arise in connection with the development, co-ordination or regulation of the operation of transport vehicles in an inter-State region;

(c) to issue directions to the State Transport Authorities or Regional Transport Authorities interested regarding the grant, revocation and suspension of permits and of countersignatures of permits for the operation of transport vehicles in respect of any route or area common to two or more States;

(d) to grant, revoke or suspend any permit or countersign any permit for the operation of any transport vehicle in respect of such route or area common to

(b) the powers and functions of the Regional Transport Authorities and State Transport Authorities interested in respect of such route or area shall be exercised and discharged by the Commission; and any permit granted or countersigned by the Commission for any such route or area shall be valid for that route or area, notwithstanding anything contained in this Chapter;

(Chapter IV.—Control of Transport Vehicles.)

(3) The ^{State} Provincial Government [or, if authorized in this behalf by the ^{State} Provincial Government by rules made under section 68, the Provincial or a Regional Transport Authority] may require persons employing any persons whose work is subject to any of the provisions of sub-section (1) to fix beforehand the hours of work of such persons so as to conform with those provisions, and may provide for the recording of the hours so fixed.

(4) No person shall work or shall cause or allow any other person to work outside the hours fixed or recorded for the work of such persons in compliance with any rule made under sub-section (3).

(5) The ^{State} Provincial Government may prescribe the circumstances under which any period during which the driver of a vehicle although not engaged in work is required to remain on or near the vehicle may be deemed to be an interval for rest within the meaning of sub-section (1)

66. Any contract for the conveyance of a passenger in a stage carriage or contract carriage, in respect of which a permit has been issued under this Chapter, shall, so far as it purports to negative or restrict the liability of any person in respect of any claim made against that person in respect of the death of, or bodily injury to, the passenger while being carried in, entering or alighting from the vehicle, or purports to impose any conditions with respect to the enforcement of any such liability, be void. Voidance of contracts restrictive of liability.

67. (1) A ^{State} Provincial Government may make rules to regulate, in respect of stage carriages and contract carriages,— Power to make rules as to stage carriages and contract carriages.

(a) the conduct of persons licensed to act as drivers of, and the licensing of and the conduct of conductors of, such vehicles when acting as such; and

(b) the conduct of passengers in such vehicles.

(2) Without prejudice to the generality of the foregoing provision, such rules may—

(a) authorise the removal from such vehicle of any person infringing the rules by the driver or conductor of the vehicle, or, on the request of the driver or conductor, or any passenger, by any police officer;

(b) require a passenger who is reasonably suspected by the driver or conductor of contravening the rules to give his name and address to a police officer or to the driver or conductor on demand;

(c) require a passenger to declare, if so requested by the driver or conductor, the journey he intends to take or has taken in the vehicle and to pay the fare for the whole of such journey and to accept any ticket provided therefor;

(Chapter IV.—Control of Transport Vehicles.)

(d) require, on demand being made for the purpose by the driver or conductor or other person authorised by the owner of the vehicle, production during the journey and surrender at the end of the journey by the holder thereof of any ticket issued to him;

(ff) require a passenger to abstain from doing anything which is likely to obstruct or interfere with the working of the vehicle or to cause damage to any part of the vehicle or its equipment or to cause injury or discomfort to any other passenger;

(fff) require a passenger not to smoke in any vehicle, on which a notice prohibiting smoking is exhibited;".

power to make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, rules under this section may be made with respect to all or any of the following matters, namely:—

(a) the period of appointment and the terms of appointment of and the conduct of business by Regional and Provincial Transport Authorities and the reports to be furnished by them;

(b) the conduct and hearing of appeals that may be preferred under this Chapter ¹[the fees to be paid in respect of such appeals and the refund of such fees];

(c) the forms to be used for the purposes of this Chapter, including the forms of permits;

(d) the issue of copies of permits in place of permits lost or destroyed ~~or mutilated~~ 104/56

(e) the documents, plates and marks to be carried by transport vehicles, the manner in which they are to be carried and the languages in which any such documents are to be expressed;

(f) the badges and uniform to be worn by drivers and conductors;
 (g) the fees to be paid in respect of applications for permits, duplicate permits and plates;";

(gg) the exemption of prescribed persons or prescribed classes of persons from payment of all or any or any portion of the fees payable under this Chapter;]

(Chapter IV.—Control of Transport Vehicles.)

“(hh) the conditions subject to which, and the extent to which, a permit granted in another State shall be valid in the State without countersignature;”;

“(i) the conditions subject to which, and the extent to which, a permit granted in one region shall be valid in another region within the State without countersignature;

“(ii) the conditions to be attached to permits for the purpose of giving effect to any agreement such as is referred to in clause (iv) of sub-section (1) of section 43;”;

~~contract carriage is adapted to carry and the number which may be carried;~~

“(m) the conditions subject to which goods may be carried on stage and contract carriages partly or wholly in lieu of passengers;

“(n) the safe custody and disposal of property left in a stage or contract carriage;

~~making or making of transport vehicles and the display of advertisement or making of transport vehicles and the display of advertisement prohibiting the painting or marking of a stage or a contract carriage in such colour or manner as to induce any person to believe that the vehicle is used for the transport of mails;~~

the conveyance in stage or contract carriages of corpses or persons suffering from any infectious or contagious disease or goods likely to cause discomfort or injury to passengers and the inspection and disinfection of such carriages, if used for such purposes;

“(g) the provision of taxi meters on motor cabs requiring approval or standard types of taxi meters to be used and examining, testing and sealing taxi meters;

“(s) the requirements which shall be complied with in the construction or use of any duly notified stand or halting place, including the provision of adequate equipment and facilities for the convenience of all users thereof, the fees, if any, which may be charged for the use of such facilities, the records which shall be maintained at such stands or places, the staff to be employed thereat, and the duties and conduct of such staff, and generally for maintaining such stands and places in a serviceable and clean condition;

“(ss) the regulation of motor-cab ranks;”;

~~change of address or to report the number~~

“(tt) authorising specified persons to enter at all reasonable times and inspect all premises used by permit holders for the purposes of their business;”;

62. After Chapter IV of the principal Act, the following shall be inserted, namely:—

Insertion of
new Chapter
IVA.

CHAPTER IVA

SPECIAL PROVISIONS RELATING TO STATE TRANSPORT UNDERTAKINGS

68A. In this Chapter, unless the context otherwise requires,—

Definitions.

(a) "road transport service" means a service of motor vehicles carrying passengers or goods or both by road for hire or reward;

(b) "State transport undertaking" means any undertaking providing road transport service, where such undertaking is carried on by,—

(i) the Central Government or a State Government;

(ii) any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950;

(iii) the Delhi Road Transport Authority established under section 3 of the Delhi Road Transport Authority Act, 1950;

(iv) any municipality or any corporation or company owned or controlled by the State Government.

transport undertaking to be carried on in the area or route, as the case may be, may desire, approve or modify the scheme.

(3) The scheme as approved or modified under sub-section (2) shall then be published in the Official Gazette by the State Government and the same shall thereupon become final and shall be called the approved scheme and the area or route to which it relates shall be called the notified area or notified route:

Provided that no such scheme which relates to any inter-State route shall be deemed to be an approved scheme unless it has been published in the Official Gazette with the previous approval of the Central Government.

1 Subs. by s. 16 of the Motor Vehicles (Amendment) Act, 1942 (20 of 1942) for the original clause.

(Chapter V.—Construction, equipment and maintenance of Motor Vehicles. Chapter VI.—Control of Traffic.)

- (b) seating arrangements in public service vehicles and the protection of passengers against the weather;
- (c) the size, nature and condition of tyres;
- (d) brakes and steering gear;
- (e) the use of safety glass;
- (f) signalling appliances, lamps and reflectors;
- (g) speed governors;
- (h) the emission of smoke, visible vapour, sparks, ashes, grit or oil;
- (i) the reduction of noise emitted by or caused by vehicles;
- (j) prohibiting or restricting the use of audible signals at certain times or in certain places;
- (k) prohibiting the carrying of appliances likely to cause annoyance or danger;
- (l) the periodical testing and inspection of vehicles by prescribed authorities;
- (m) the particulars other than registration marks to be exhibited by vehicles and the manner in which they shall be exhibited; and
- (n) the use of trailers with motor vehicles.

CHAPTER VI.

CONTROL OF TRAFFIC.

71. (1) No person shall drive a motor vehicle or cause or allow a motor vehicle to be driven in any public place at a speed exceeding the maximum speed fixed for the vehicle by or under this Act or by or under any law for the time being in force: Limits of speed.

Provided that such maximum speed shall in no case exceed the maximum fixed for the vehicle in the Eighth Schedule.

(2) The ~~Provincial~~ ^{State} Government or any authority authorised in this behalf by the ~~Provincial~~ ^{State} Government may, if satisfied that it is necessary to restrict the ~~speed~~ ^{use} of motor vehicles in any public place, by not ^{safety}

“Provided that where any restriction under this section is to remain in force for not more than one month, notification thereof in the Official Gazette shall not be necessary.”;

“(3) Nothing in this section shall apply to any vehicle registered under section 39 while it is being used in the execution of military manoeuvres within the area and during the period specified in the notification under sub-section (1) of section 2 of the Manoeuvres, Field Firing and Artillery Practice Act, 1938.”

(Chapter VI.—Control of Traffic.)

Provided that any permit issued before the commencement of this Act may be continued or renewed by the competent authority for a period not exceeding three years under the conditions upon which the permit was originally issued, unless the Provincial Government directs otherwise.

(2) Except as may be otherwise prescribed, no person shall drive or allow to be driven in any public place any motor vehicle which is not fitted with pneumatic tyres.

(3) No person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer—

(a) the unladen weight of which exceeds the unladen weight specified in the certificate of registration of the vehicle, or

(b) the laden weight of which exceeds the registered laden weight specified in the certificate of registration, or

(c) any axle weight of which exceeds the maximum axle weight specified for that axle in the certificate of registration.

(4) Where the driver or person in charge of a motor vehicle or trailer driven in contravention of sub-section (2) or clause (a) of sub-section—

73 “(2) Where any excess goods are removed from any goods vehicle or trailer for storage under sub-section (1) such person as may be authorised in this behalf by the State Government shall cause a notice in writing to be served on the owner of the vehicle or trailer, as the case may be, requiring him to remove the goods within the time to be specified in the notice and if the owner of the vehicle or trailer refuses or fails to remove the goods within the time specified, the authorised person may sell the goods by public auction and the balance of the sale proceeds, after deducting therefrom the charges for the storage of the goods and the costs incidental to the sale, shall be paid to the owner of the vehicle or trailer, as the case may be:

Provided that where the excess goods removed are of a perishable nature, the sale can be held immediately after causing the notice to be served on the driver of

66. To section 74 of the principal Act, the following shall be added, namely:—

Amendment
of section
74.

“and when any such prohibition or restriction is imposed, shall cause appropriate traffic signs to be placed or erected under section 75 at suitable places:

Provided that where any prohibition or restriction under this section is to remain in force for not more than one month, notification thereof in the Official Gazette shall not be necessary, but such local publicity as the circumstances may permit, shall be given of such prohibition or

Power to
have vehicle
weighed.

Power to re-
strict the use
of vehicles.

Power to
erect traf-
fic signs.

(Chapter VI.—Control of Traffic.)

(2) Traffic signs erected under sub-section (1) for any purpose for which provision is made in the Ninth Schedule shall be of the size, colour and type and shall have the meanings set forth in the Ninth Schedule, but the ~~Provincial~~ Provincial Government or any authority empowered in this behalf by the ~~Provincial~~ Provincial Government may make or authorise the addition to any sign set forth in the said Schedule of transcriptions of the words, letters or figures thereon in such script as the Provincial Government may think fit provided that the transcriptions shall be of similar size and colour to the words, letters or figures set forth in the Ninth Schedule.

(3) Except as provided by sub-section (1) no traffic sign shall, after the commencement of this Act, be placed or erected on or near any road; but all traffic signs erected prior to the commencement of this Act by any competent authority shall for the purposes of this Act be deemed to

“(5) No person shall wilfully remove, alter, deface, or in any way tamper with, any traffic signs placed or erected under this section.

(6) If any person accidentally causes such damage to a traffic sign as renders it useless for the purpose for which it is placed or erected under this section, he shall report the circumstances of the occurrence to a police officer or at a police station as soon as possible, and in any case within twenty-four hours of the occurrence.

Parking
places and
halting
stations.

(7) For the purpose of bringing the signs set forth in the Ninth Schedule in conformity with any international convention relative to motor traffic to which the Central Government is for the time being a party, the Central Government may, by notification in the Official Gazette, make any addition or alteration to any such sign and on the issue of any such notification, the Ninth Schedule shall be deemed to be amended accordingly.”.

Schedule.

78. ²[(1)] Every driver of a motor vehicle shall drive the vehicle in conformity with any indication given by ³[a mandatory traffic sign] and in conformity with the driving regulations set forth in the Tenth Schedule, and shall comply with all directions given him by any police officer for the time being engaged in the regulation of traffic in any public place.

Duty to obey
traffic signs.

²[(2) In this section “mandatory traffic sign” means a traffic sign included in Part A of the Ninth Schedule, or any traffic sign of similar

¹ Ins. by s. 17 of the Motor Vehicles (Amendment) Act. 1942 (20 of 1942).

² S. 78 was re-numbered as sub-section (1) of that section and sub-section (2) ins. by s. 18, *ibid.*

³ Subs. for “a traffic sign included in Part A of the Ninth Schedule”, *ibid.*

(Chapter VI.—Control of Traffic.)

form (that is to say, consisting of or including a circular disc displaying a device, word or figure and having a red ground or border) erected for the purpose of regulating motor vehicle traffic under sub-section (1) of section 75.]

Signals and
signalling
devices.

79. The driver of a motor vehicle shall on the occasions specified in the Eleventh Schedule make the signals specified therein :

Provided that the signal of an intention to turn to the right or left or to stop may be given by a mechanical or an electrical device of a prescribed nature affixed to the vehicle.

Vehicles
with left
hand con-
trol.

80. No person shall drive or cause or allow to be driven in any public place any motor vehicle with a left hand steering control unless it is equipped with a mechanical or electrical signalling device of a prescribed nature and in working order.

Leaving
vehicle in
dangerous
position.

81. No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to remain at rest on any road in such a position or in such a condition or in such circumstances as to cause or be likely to cause danger, obstruction or undue inconvenience to other users of the road.

Riding on
running
board.

82. No person driving or in charge of a motor vehicle shall carry any person or permit any person to be carried on the running board or otherwise than within the body of the vehicle.

Obstruction
of driver.

83. No person driving a motor vehicle shall allow any person to stand or sit or anything to be placed in such a manner or position as to hamper the driver in his control of the vehicle.

Stationary
vehicles.

84. No person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place, unless there is in the driver's seat a person duly licensed to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied or such other measures taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver.

Pillion
riding.

85. No driver of a two-wheeled motor cycle shall carry more than one person in addition to himself on the cycle and no such person shall be carried otherwise than sitting on a proper seat securely fixed to the cycle behind the driver's seat.

and the conductor, if any

Duty to pro-
duce licence
and certi-
ficate of
registration.

86. (1) The driver of a motor vehicle in any public place shall, on demand by any police officer in uniform, produce his licence for examination.

(other than a vehicle registered under section 39)

(2) The owner of a motor vehicle, or in his absence the driver or other person in charge of the vehicle, shall, on demand by a registering authority or any person authorised in this behalf by the Provincial Government, produce the certificate of registration of the vehicle and, where the vehicle is a transport vehicle, the certificate of fitness referred to in section 38.

(Chapter VI.—Control of Traffic.)

(3) If the licence or certificates, as the case may be, are not at the time in the possession of the person to whom demand is made, it shall be a sufficient compliance with this section if such person produces the licence or certificates within ten days at any police station in ^{the India} ~~the Provinces~~ which he specifies to the police officer or authority making the demand:

Provided that, except to such extent and with such modifications as may be prescribed, the provisions of this sub-section shall not apply to a driver driving as a paid employee, or to the driver of a transport vehicle or to any person required to produce the certificate of registration or the certificate of fitness of a transport vehicle.

87. (1) The driver of a motor vehicle shall cause the vehicle to stop and remain stationary so long as may reasonably be necessary—

Duty of driver to stop in certain cases.

- ~~and~~ (a) when required to do so by any police officer in uniform, or
 (b) when required to do so by any person in charge of an animal if such person apprehends that the animal is, or being alarmed by the vehicle will become, unmanageable, or
 (c) when the vehicle is involved in the occurrence of an accident to a person, animal or vehicle or of damage to any property, whether the driving or management of the vehicle was or was not the cause of the accident or damage,

and he shall give his name and address and the name and address of the owner of the vehicle to any person affected by any such accident or damage who demands it provided such person also furnishes his name and address.

(2) The driver of a motor vehicle shall, on demand by a person giving his own name and address and alleging that the driver has committed an offence punishable under section 116, give his name and address to that person.

(3) In this section the expression “animal” means any horse, cattle, elephant, camel, ass, mule, sheep or goat.

or conductor

88. The owner of a motor vehicle the driver¹ of which is accused of any offence under this Act shall, on the demand of any police officer authorised in this behalf by the Provincial Government, give all information regarding the name and address of and the licence held by the driver¹ which is in his possession or could by reasonable diligence be ascertained by him.

Duty of owner of motor vehicle to give information.

89. When any person is injured as the result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall—

Duty of driver in case of accident and injury to a person.

- (a) take all reasonable steps to secure medical attention for the injured person, and, if necessary, convey him to the

¹ Subs. by the A.O. 1948 for “British India”.

(Chapter VI.—Control of Traffic.)

nearest hospital unless the injured person or his guardian, in case he is a minor, desires otherwise;

- (b) give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence at the nearest police station as soon as possible, and in any case within twenty-four hours of the occurrence.

Inspection
of vehicle
involved in
accident.

90. When any accident occurs in which a motor vehicle is involved, any person authorised in this behalf by the Provincial Government may, on production if so required of his authority, inspect the vehicle and for that purpose may enter at any reasonable time any premises where the vehicle may be, and may remove the vehicle for examination :

Provided that the place to which the vehicle is so removed shall be intimated to the owner of the vehicle and the vehicle shall be returned without unnecessary delay.

Power to
make rules.

91. (1) The ^{State} Provincial Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the nature of the mechanical or electrical signalling devices which may be used on motor vehicles;
- (b) the removal and the safe custody of vehicles including their
“(cc) the maintenance and management of godowns for the storage of goods removed from overloaded vehicles and the fees, if any, to be charged for the use of such godowns;”.

Chapter of Fire Brigade vehicles, ambulances and other special classes of vehicle, subject to such conditions as may be prescribed;

- (e) the maintenance and management of parking places and stands and the fees, if any, which may be charged for their use;
- (f) prohibiting the driving down hill of a motor vehicle with the gear disengaged either generally or in a specified place;
- (g) prohibiting the taking hold of or mounting of a motor vehicle in motion;
- (h) prohibiting the use of foot paths or pavements by motor vehicles;
- (i) generally, the prevention of danger, injury or annoyance to the public or any person, or of danger or injury to property or of obstruction to traffic; and
- (j) any other matter which is to be or may be prescribed.

(Chapter VII.—Motor Vehicles temporarily leaving or visiting the States.)

CHAPTER VII.

MOTOR VEHICLES TEMPORARILY LEAVING OR VISITING ¹[THE STATES].

92. (1) The Central Government may, by notification in the official Gazette, make rules for all or any of the following purposes, namely:—

Power of
Central
Government
to make
rules.

(a) the grant and authentication of travelling passes, certificates or authorisations to persons temporarily taking motor vehicles out of ~~[the States]~~ to any place outside India or to persons temporarily proceeding out of ~~[the States]~~ to

²the conditions subject to which persons em-

12 (1A) For the purpose of facilitating and regulat

To replace pages 53 to 66 of Unrepealed Central Acts, Vol. X
Second Edition. These pages are corrected up to 1st August, 1950.

tors of such motor vehicles;

(i) the replacement of the travelling passes, certificates or authorisations, permits, licences or any other prescribed documents lost or defaced, on payment of such fee as may be prescribed;

(j) the exemption from the provisions of such laws as relate to customs, police or health with a view to facilitate such road transport services;

(k) any other matter which is to be, or may be, prescribed.”;

CA 100/56

¹ Subs. by the Adaptation of Laws Order, 1950, for “the Provinces”.

² Subs. by the A.O. 1948, for “from British India”.

³ Subs. by the Adaptation of Laws Order, 1950, for “Provinces”.

⁴ Ins. by s. 19 of the Motor Vehicles (Amendment) Act, 1942 (20 of 1942).

⁵ Subs. by the Adaptation of Laws Order, 1950, for “Provincial”.

“ shall apply—

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section

(i) to any motor vehicle to which or to any driver of a motor vehicle to whom any rules made under clause (b) or clause (c) of sub-section (1) or under sub-section (1A) apply; or

(ii) to any conductor of a motor vehicle to whom any rules made under sub-section (1A) apply.”

CHAPTER VIII.

INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS.

Definitions

93. In this Chapter—

“(a) ‘authorised insurer’ means an insurer in whose case the requirements of the Insurance Act, 1938, are complied with;” the et to plied

“(c) ‘reciprocating country’ means any such country as may on the basis of reciprocity be notified by the Central Government in the Official Gazette to be a reciprocating country for the purposes of this Chapter.” 100/57

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“(2) Sub-section (1) shall not apply to any vehicle owned by the Central Government, or a State Government and used for Government purposes unconnected with any commercial enterprise.

(3) The appropriate Government may, by order, exempt from the operation of sub-section (1) any vehicle owned by any of the following authorities, namely:—

(a) the Central Government or a State Government if the vehicle is used for Government purposes connected with any commercial enterprise;

(b) any local authority;

(c) any State transport undertaking within the meaning of section 68A:

Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in accordance with the rules made in that behalf under this Act for meeting any liability

Require-
ments of
policies &
limits of
liability.

arising out of the use of any vehicle of that authority which that authority or any person in its employment may incur to third parties.

Explanation.—For the purposes of this sub-section, “appropriate Government” means the Central Government or a State Government, as the case may be, and in relation to any local authority or State transport undertaking, means that Government which has control over that local authority or State transport undertaking.” 100/576

(Chapter VIII.—Insurance of Motor Vehicles against
Third Party Risks.)

liability which may be incurred by him or them in res-
(2) in clause (i), after the word "employment" caused
where it occurs for the second time, the following place:
shall be inserted, namely:—

"other than a liability arising under the
Workmen's Compensation Act, 1923, in respect of
the death of, or bodily injury to, any such em-
ployee—

(a) engaged in driving the vehicle, or

(b) if it a public service vehicle, en-
gaged as a conductor of the vehicle or in exa-
mining tickets on the vehicle, or

(c) if it is a goods vehicle, being car-
ried in the vehicle.";

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arising from the vehicle at the time of the occurrence
of the event out of which a claim arises, or

(iii) to cover any contractual liability.

(2) Subject to the proviso to sub-section (1), a policy of insurance

(b) for clause (a) of sub-section (2), the following
clause shall be substituted, namely:—

"(a) where the vehicle is a goods vehicle, a limit
of twenty thousand rupees in all, including the liabili-
ties, if any, arising under the Workmen's Compensa-
tion Act, 1923, in respect of the death of, or bodily
injury to, employees (other than the driver), not ex-
ceeding six in number, being carried in the vehicle;"

and in respect of passengers a limit of
twenty thousand rupees in all, and four thousand rupees
in respect of an individual passenger, if the vehicle is
registered to carry not more than six passengers excluding
the driver or two thousand rupees in respect of an indi-
vidual passenger, if the vehicle is registered to carry more
than six passengers excluding the driver;

(c) where the vehicle is a vehicle of any other class the amount
of the liability incurred.

(3) A [State] Government may prescribe that a policy of in-
surance shall in order to comply with the requirements of this Chapter

¹ Subs. by the Adaptation of Laws Order, 1950, for "Provincial".

*(Chapter VIII.—Insurance of Motor Vehicles against
Third Party Risks.)*

cover any liability arising under the provisions of the Workmen's Compensation Act, 1923, in respect of the death of or bodily injury to any paid employee engaged in driving or otherwise in attendance on or being carried in a motor vehicle.

(4) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person

“(4A) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe”.

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Validity of
policies of
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issued in
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“95A. Where, in pursuance of an arrangement between India and any reciprocating country, any motor vehicle registered in the reciprocating country operates on any route or within any area common to the two countries and there is in force in relation to the use of the vehicle in the reciprocating country, a policy of insurance complying with the requirements of the law of insurance in force in that country, then, notwithstanding anything contained in section 95 but subject to any rules which may be made under section 111, such policy of insurance shall be effective throughout the route or area in respect of which the arrangement has been made, as if the policy of insurance had complied with the requirements of this Chapter.”.

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10/56

respect or any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the Court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—

- (a) that the policy was cancelled by mutual consent or by virtue of any provision contained therein before the accident giving rise to the liability, and that either the certificate of insurance was surrendered to the insurer or that the person to whom the certificate was issued has made an affidavit stating that the certificate has been lost or des-

(Chapter VIII.—Insurance of Motor Vehicles against
Third Party Risks.)

troyed, or that either before or not later than fourteen days after the happening of the accident the insurer has commenced proceedings for cancellation of the certificate after compliance with the provisions of section 105; or

(b) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—

(i) a condition excluding the use of the vehicle—

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a public service vehicle or a goods vehicle, or

(d) without side-car being attached, where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or by any person who is not duly licensed, or

“(2A) Where any such judgment as is referred to in sub-section (1) is obtained from a court in the State of Jammu and Kashmir or in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908, conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938, and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a court in India:—

of Jammu and Kashmir or in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908, conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938, and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment were given by a court in India:

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before or after the commencement of the proceedings in which the judgment is given, the insurer had notice through the court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the State of Jammu and Kashmir or of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).”; C.A. 100/56

(Chapter VIII.—Insurance of Motor Vehicles against
Third Party Risks.)

(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(5) In this section the expressions “material fact” and “material particular” mean, respectively, a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk, and, if so, at what premium and on what conditions, and the expression “liability covered by the terms of the policy” means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(6) No insurer to whom the notice referred to in sub-section (2) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment as is referred to in sub-section (1) otherwise than in the manner provided for in sub-section (2). *or sub-section (2A)*
in the corresponding Law of the State of Jammu & Kashmir or of the reciprocating country, as the case may be.

sub-sec. A
Rights of
third parties
against
insurers on
insolvency
of the ins-
ured.

97. (1) Where under any contract of insurance effected in accordance with the provisions of this Chapter a person is insured against liabilities which he may incur to third parties then—

(a) in the event of the person becoming insolvent or making a composition or arrangement with his creditors, or

(b) where the insured person is a company, in the event of a winding up order being made or a resolution for a voluntary winding up being passed with respect to the company or of a receiver or manager of the company's business or undertaking being duly appointed, or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge,

if, either before or after that event, any such liability is incurred by the insured person, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order for the administration of the estate of a deceased debtor is made according to the law of insolvency, then, if any debt provable in insolvency is owing by the deceased in respect of a liability to a third party against which he was insured under a contract of insurance in accordance with the provisions of this Chapter, the

*(Chapter VIII.—Insurance of Motor Vehicles against
Third Party Risks.)*

deceased debtor's rights against the insurer in respect of that liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the person to whom the debt is owing.

(3) Any condition in a policy issued for the purposes of this Chapter purporting either directly or indirectly to avoid the policy or to alter the rights of the parties thereunder upon the happening to the insured person of any of the events specified in clause (a) or clause (b) of sub-section (1) or upon the making of an order for the administration of the estate of a deceased debtor according to the law of insolvency shall be of no effect.

(4) Upon a transfer under sub-section (1) or sub-section (2) the insurer shall be under the same liability to the third party as he would have been to the insured person, but—

(a) if the liability of the insurer to the insured person exceeds the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the insured person against the insurer in respect of the excess, and

(b) if the liability of the insurer to the insured person is less than the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the third party against the insured person in respect of the balance.

98. (1) No person against whom a claim is made in respect of any liability referred to in clause (b) of sub-section (1) of section 95 shall on demand by or on behalf of the person making the claim refuse to state whether or not he was insured in respect of that liability by any policy issued under the provisions of this Chapter, or would have been so insured if the insurer had not avoided or cancelled the policy, nor shall he refuse, if he was or would have been so insured, to give such particulars with respect to that policy as were specified in the certificate of insurance issued in respect thereof.

Duty to
give inform-
ation as to
insurance.

(2) In the event of any person becoming insolvent or making a composition or arrangement with his creditors or in the event of an order being made for the administration of the estate of a deceased person according to the law of insolvency, or in the event of a winding up order being made or a resolution for a voluntary winding up being passed with respect to any company or of a receiver or manager of the company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge on any property comprised in or subject to the charge, it shall be the duty of the insolvent debtor, personal representative of the deceased debtor or company, as the case may be, or the official assignee or receiver in insolvency, trustee, liquidator, receiver

*(Chapter VIII.—Insurance of Motor Vehicles against
Third Party Risks.)*

or manager, or person in possession of the property to give at the request of any person claiming that the insolvent debtor, deceased debtor or company is under such liability to him as is covered by the provisions of this Chapter, such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by section 97, and for the purpose of enforcing such rights, if any; and any such contract of insurance as purports whether directly or indirectly to avoid the contract or to alter the rights of the parties thereunder upon the giving of such information in the events aforesaid, or otherwise to prohibit or prevent the giving thereof in the said events, shall be of no effect.

(3) If, from the information given to any person in pursuance of sub-section (2) or otherwise, he has reasonable ground for supposing that there have or may have been transferred to him under this Chapter rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by the said sub-section on the persons therein mentioned.

(4) The duty to give the information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

Settlement
between
insurers
and insured
persons.

99. (1) No settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability of the nature referred to in clause (b) of sub-section (1) of section 95 shall be valid unless such third party is a party to the settlement.

(2) Where a person who is insured under a policy issued for the purposes of this Chapter has become insolvent, or where, if such insured person is a company, a winding up order has been made or a resolution for a voluntary winding up has been passed with respect to the company no agreement made between the insurer and the insured person after liability has been incurred to a third party and after the commencement of the insolvency or winding up, as the case may be, nor any waiver, assignment or other disposition made by or payment made to the insured person after the commencement aforesaid shall be effective to defeat the rights transferred to the third party under this Chapter, but those rights shall be the same as if no such agreement, waiver, assignment or disposition or payment has been made.

Saving in
respect of
sections 97,
98 and 99.

100. (1) For the purposes of sections 97, 98 and 99, a reference to "liabilities to third parties" in relation to a person insured under any policy of insurance shall not include a reference to any liability of that person in the capacity of insurer under some other policy of insurance.

(Chapter VIII.—Insurance of Motor Vehicles against
Third Party Risks.)

(2) The provisions of sections 97, 98 and 99 shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of an amalgamation with another company.

101. Where a certificate of insurance has been issued to the person by whom a policy has been effected, the happening in relation to any person insured by the policy of any such event as is mentioned in sub-section (1) or sub-section (2) of section 97 shall, notwithstanding anything in this Chapter, not affect any liability of that person of the nature referred to in clause (b) of sub-section (1) of section 95; but nothing in this section shall affect any rights against the insurer conferred under the provisions of sections 97, 98 and 99 on the person to whom the liability was incurred.

Insolvency of insured persons not to affect liability of insured or claims by third parties

102. Notwithstanding anything contained in section 306 of the Indian Succession Act, 1925, the death of a person in whose favour a certificate of insurance ~~or cover note~~ had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer.

Effect of death on certain causes of action.

103. When an insurer has issued a certificate of insurance in respect of a contract of insurance between the insurer and the insured person, then—

Effect of certificate of insurance.

(a) if and so long as the policy described in the certificate has not been issued by the insurer to the insured, the insurer shall, as between himself and any other person except the insured, be deemed to have issued to the insured person a policy of insurance conforming in all respects with the description and particulars stated in such certificate; and

(b) if the insurer has issued to the insured the policy described in the certificate, but the actual terms of the policy are less favourable to persons claiming under or by virtue of the policy against the insurer either directly or through the insured than the particulars of the policy as stated in the certificate, the policy shall, as between the insurer and any other person except the insured, be deemed to be in terms conforming in all respects with the particulars stated in the said certificate.

104. (1) Whenever the period of cover under a policy of insurance issued under the provisions of this Chapter is terminated or suspended by any means before its expiration by effluxion of time, the insured person shall within seven days after such termination or suspension

Duty to surrender certificate cancellation of policy.

*(Chapter VIII.—Insurance of Motor Vehicles against
Third Party Risks.)*

deliver to the insurer by whom the policy was issued the latest certificate of insurance given by the insurer in respect of the said policy, or, if the said certificate has been lost or destroyed, make an affidavit to that effect.

(2) Whoever fails to surrender, a certificate of insurance or to make an affidavit, as the case may be, in accordance with the provisions of this section shall be punishable with fine which may extend to fifteen rupees for every day that the offence continues subject to a maximum of five hundred rupees.

Duty of insurer to notify registering authority cancellation or suspension of the policy.

105. Whenever a policy of insurance issued under the provisions of this Chapter is cancelled or suspended by the insurer who has issued the policy, the insurer shall within seven days notify such cancellation or suspension to the registering authority in whose records the registration of the vehicle covered by the policy of insurance is recorded or to such other authority as the [State] Government may prescribe.

Production of certificate of insurance.

106. (1) Any person driving a motor vehicle in any public place shall on being so required by a police officer in uniform produce the certificate of insurance relating to the use of the vehicle:

authorised in this behalf by the State Government

Provided that if the driver of a motor vehicle within seven days from the date on which the production of the certificate of insurance was so required produces the certificate at such police station as may have been specified by him at the time its production was required he shall not be liable to conviction under this sub-section by reason only of failure to produce the certificate to the police officer.

“(2A) No person shall be liable to conviction under sub-section (1) or sub-section (2) by reason only of the failure to produce the certificate of insurance if, within seven days from the date on which its production was required under sub-section (1), or as the case may be, from the date of occurrence of the accident, he produces the certificate at such police station as may have been specified by him to the police officer who required its production or, as the case may be, to the police officer at the site of the accident or to the officer in charge of the police station at which he reported the accident:

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Provided that except to such extent and with such modifications as may be prescribed, the provisions of this sub-section shall not apply to the driver of a transport vehicle.”

(Chapter VIII.—Insurance of Motor Vehicles against
Third Party Risks.)

(3) The owner of a motor vehicle shall give such information as he may be required by or on behalf of a police officer empowered in this behalf by the ¹[State] Government to give for the purpose of determining whether the vehicle was or was not being driven in contravention of section 94 and on any occasion when the driver was required under this section to produce his certificate of insurance.

(4) In this section the expression "produce his certificate of insurance" means produce for examination the relevant certificate of insurance or such other evidence as may be prescribed that the vehicle was not being driven in contravention of section 94.

107. A ¹[State] Government may make rules requiring the owner of any motor vehicle when applying whether by payment of a tax or otherwise for authority to use the vehicle in a public place to produce such evidence as may be prescribed by those rules to the effect that either—

Production of certificates of insurance on application for authority to use vehicle.

(a) on the date when the authority to use the vehicle comes into operation there will be in force the necessary policy of insurance in relation to the use of the vehicle by the applicant or by other persons on his order or with his permission, or

(b) the vehicle is a vehicle to which section 94 does not apply.

108. (1) A ¹[State] Government may, on the application of a co-operative society of ~~public service~~ ^(transport) vehicle owners registered or deemed to have been registered under the Co-operative Societies Act, 1912, or under an Act of a ¹[State] Legislature governing the registration of Co-operative Societies and subject to the control of the Registrar of Co-operative Societies of the ²[State], allow the society to transact the business of an insurer for the purposes of this Chapter ~~as if the society were an authorised insurer~~, subject to the following conditions, namely:—

Co-operative Insurance.
C-A
109/56

(a) the society shall establish and maintain a fund of not less than twenty-five thousand rupees for the first fifty vehicles or fractional part thereof and *pro rata* for every additional vehicle in the possession of ~~members of the society~~ and the said fund shall be lodged in such custody as the ¹[State] Government may prescribe and shall not be

¹ Subs. by the Adaptation of Laws Order, 1950, for "Provincial".

² Subs. *ibid*, for "Province".

(Chapter VIII.—Insurance of Motor Vehicles against Third Party Risks.)

“ (b) the insurance business of the society shall, except to the extent permitted under clause (cc), be limited to transport vehicles owned by its members, and its liability shall be limited as specified in sub-section (2) of section 95;”

109/5

- 5/36 (c) the society re-insure ~~any~~ ^{ty} may, if permitted by the State subject to such conditions and limitations imposed by it, accept re-insurances (cc) (d) the provisions protective of certification of this section;”

100/56

- (e) an independent authority not associated with the society shall be appointed by the ¹[State] Government to facilitate and assist in the settling of claims against the society;

- (f) the society shall operate on an insurance basis, that is to say,—

- (i) it shall levy its premiums in respect of a period not exceeding twelve months, during which period the insured shall be held covered in respect of all accidents arising, subject to the limits of liability specified in clause (b) of sub-section (2) of section 95;

100/56

- (ii) it shall charge premiums estimated to be sufficient, having regard to the risks, to meet the capitalised value of all claims arising during the period of cover, together with an adequate charge for expenses attaching to the issue of policies and to the settlement of claims arising thereunder;

- (g) the society shall furnish to the ²Controlling of Insurance Superintendent of Insurance the returns required to be furnished by insurers under the provisions of the Insurance Act, 1938, and the ¹IV of 1938. ~~Superintendent of Insurance~~ may exercise in respect thereof any of the powers exercisable by him in respect of returns made to him under the said Act; and

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¹ Subs. by the Adaptation of Laws Order, 1950, for “Provincial”.

² Now Controller of Insurance: See Amendments made in the Insurance Act, 1938, by Act 47 of 1950.

108 “ (h) the society shall, in respect of any business transacted by it, of the nature referred to in clause (i)

“ 110. (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereinafter referred to as Claims Tribunals) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles.

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

Applic-
for compen-
sation.

of an accident of the nature specified in sub-section (1) of section 110 may be made—

(a) by the person who has sustained the injury; or
(b) where death has resulted from the accident, by the legal representatives of the deceased; or

(c) by any agent duly authorised by the person injured or the legal representatives of the deceased, as the case may be.

(2) Every application under sub-section (1) shall be made to the Claims Tribunal having jurisdiction over the area in which the accident occurred, and shall be in such form and shall contain such particulars as may be prescribed.

(3) No application for compensation under this section shall be entertained unless it is made within sixty days of the occurrence of the accident:

Provided that the Claims Tribunal may entertain the application after the expiry of the said period of sixty days if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

Award of the
Claims
Tribunal.

110B. On receipt of an application for compensation made under section 110A, the Claims Tribunal shall, after giving the parties an opportunity of being heard, hold an inquiry into the claim and make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid; and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer.

*(Chapter VIII.—Insurance of Motor Vehicles against
Third Party Risks.)*

- (a) the forms to be used for the purposes of this Chapter;
- (b) the making of applications for and the issue of certificates of insurance;
- (c) the issue of duplicates to replace certificates of insurance lost or destroyed;

(Chapter VII.—Motor Vehicles temporarily leaving or visiting the States.)

CHAPTER VII.

MOTOR VEHICLES TEMPORARILY LEAVING OR VISITING ¹[THE STATES].

92. (1) The Central Government may, by notification in the official Gazette, make rules for all or any of the following purposes, namely:—

Power of
Central
Government
to make
rules.

(a) the grant and authentication of travelling passes, certificates or authorisations to persons temporarily taking motor vehicles out of ¹[the States] to any place outside India or to persons temporarily proceeding out of ¹[the States] to any place outside India and desiring to drive a motor vehicle during their absence ²[from India];

(b) prescribing the conditions subject to which motor vehicles

To replace pages 53 to 66 of Unrepeated Central Acts, Vol. X, Second Edition. These pages are corrected up to 1st August 1950

(Chapter VII.—Motor Vehicles temporarily leaving or visiting the States. Chapter VIII.—Insurance of Motor Vehicles against Third Party Risks.)

shall apply to any motor vehicle to which or to any driver of a motor vehicle to whom any rules made under clause (b) or clause (c) of sub-section (1) apply.

CHAPTER VIII.

INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS.

Definitions

93. In this Chapter—

- (a) “authorised insurer” means an insurer in whose case the requirements of the Insurance Act, 1938, with respect to the registration of and deposits by insurers are complied with, and
- (b) “certificate of insurance” means a certificate issued by an authorised insurer in pursuance of sub-section (4) of section 95; and includes where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be.

Necessity for insurance against third party risk.

94. (1) No person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter.

Explanation.—A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.

(2) This section shall not apply to any vehicle owned by or on behalf of the Central Government or a ¹[State] Government or a local authority notified in this behalf by the ¹[State] Government or a State-owned railway, at any time when the vehicle is driven by a servant of the owner in the course of his employment, or is otherwise subject to the control of the owner.

Requirements of policies and limits of liability.

95. (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

- (a) is issued by a person who is an authorised insurer, and
- (b) insures the person or classes of person specified in the policy to the extent specified in sub-section (2) against any

¹ Subs. by the Adaptation of Laws Order, 1950, for “Provincial”.

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Third Party Risks.)*

liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place :

Provided that a policy shall not, except as may be otherwise provided under sub-section (3) be required—

- (i) of cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment, or
- (ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or
- (iii) to cover any contractual liability.

(2) Subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely:—

- (a) where the vehicle is a vehicle used or adapted to be used for the carriage of goods, a limit of twenty thousand rupees;
- (b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, in respect of persons other than passengers carried for hire or reward, a limit of twenty thousand rupees; and in respect of passengers a limit of twenty thousand rupees in all, and four thousand rupees in respect of an individual passenger, if the vehicle is registered to carry not more than six passengers excluding the driver or two thousand rupees in respect of an individual passenger, if the vehicle is registered to carry more than six passengers excluding the driver;
- (c) where the vehicle is a vehicle of any other class the amount of the liability incurred.

(3) A [State] Government may prescribe that a policy of insurance shall in order to comply with the requirements of this Chapter

¹ Subs. by the Adaptation of Laws Order, 1950, for "Provincial".

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Third Party Risks.)*

cover any liability arising under the provisions of the Workmen's Compensation Act, 1923, in respect of the death of or bodily injury to any paid employee engaged in driving or otherwise in attendance on or being carried in a motor vehicle.

(4) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance or a cover note in the prescribed form and containing the prescribed particulars of any conditions subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of person.

Duty of
insurers to
satisfy
judgments
against per-
sons insured
in respect of
third party
risks.

96. (1) If, after a certificate of insurance or a cover note has been issued under sub-section (4) of section 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding e.g., that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the Court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—

- (a) that the policy was cancelled by mutual consent or by virtue of any provision contained therein before the accident giving rise to the liability, and that either the certificate of insurance was surrendered to the insurer or that the person to whom the certificate was issued has made an affidavit stating that the certificate has been lost or des-

(Chapter VIII.—Insurance of Motor Vehicles against
Third Party Risks.)

troys, or that either before or not later than fourteen days after the happening of the accident the insurer has commenced proceedings for cancellation of the certificate after compliance with the provisions of section 105; or

(b) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—

(i) a condition excluding the use of the vehicle—

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a public service vehicle or a goods vehicle, or

(d) without side-car being attached, where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(c) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where a certificate of insurance or cover note has been issued under sub-section (4) of section 95 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 95, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

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Third Party Risks.)*

(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(5) In this section the expressions "material fact" and "material particular" mean, respectively, a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk, and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(6) No insurer to whom the notice referred to in sub-section (2) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment as is referred to in sub-section (1) otherwise than in the manner provided for in sub-section (2).

Rights of
third parties
against
insurers on
insolvency
of the ins-
ured.

97. (1) Where under any contract of insurance effected in accordance with the provisions of this Chapter a person is insured against liabilities which he may incur to third parties then—

(a) in the event of the person becoming insolvent or making a composition or arrangement with his creditors, or

(b) where the insured person is a company, in the event of a winding up order being made or a resolution for a voluntary winding up being passed with respect to the company or of a receiver or manager of the company's business or undertaking being duly appointed, or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge,

if, either before or after that event, any such liability is incurred by the insured person, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order for the administration of the estate of a deceased debtor is made according to the law of insolvency, then, if any debt provable in insolvency is owing by the deceased in respect of a liability to a third party against which he was insured under a contract of insurance in accordance with the provisions of this Chapter, the

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Third Party Risks.)*

deceased debtor's rights against the insurer in respect of that liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the person to whom the debt is owing.

(3) Any condition in a policy issued for the purposes of this Chapter purporting either directly or indirectly to avoid the policy or to alter the rights of the parties thereunder upon the happening to the insured person of any of the events specified in clause (a) or clause (b) of sub-section (1) or upon the making of an order for the administration of the estate of a deceased debtor according to the law of insolvency shall be of no effect.

(4) Upon a transfer under sub-section (1) or sub-section (2) the insurer shall be under the same liability to the third party as he would have been to the insured person, but—

- (a) if the liability of the insurer to the insured person exceeds the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the insured person against the insurer in respect of the excess, and
- (b) if the liability of the insurer to the insured person is less than the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the third party against the insured person in respect of the balance.

98. (1) No person against whom a claim is made in respect of any liability referred to in clause (b) of sub-section (1) of section 95 shall on demand by or on behalf of the person making the claim refuse to state whether or not he was insured in respect of that liability by any policy issued under the provisions of this Chapter, or would have been so insured if the insurer had not avoided or cancelled the policy, nor shall he refuse, if he was or would have been so insured, to give such particulars with respect to that policy as were specified in the certificate of insurance issued in respect thereof.

*Duty to
give information as to
insurance.*

(2) In the event of any person becoming insolvent or making a composition or arrangement with his creditors or in the event of an order being made for the administration of the estate of a deceased person according to the law of insolvency, or in the event of a winding up order being made or a resolution for a voluntary winding up being passed with respect to any company or of a receiver or manager of the company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge on any property comprised in or subject to the charge, it shall be the duty of the insolvent debtor, personal representative of the deceased debtor or company, as the case may be, or the official assignee or receiver in insolvency, trustee, liquidator, receiver

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Third Party Risks.)*

or manager, or person in possession of the property to give at the request of any person claiming that the insolvent debtor, deceased debtor or company is under such liability to him as is covered by the provisions of this Chapter, such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by section 97, and for the purpose of enforcing such rights, if any; and any such contract of insurance as purports whether directly or indirectly to avoid the contract or to alter the rights of the parties thereunder upon the giving of such information in the events aforesaid, or otherwise to prohibit or prevent the giving thereof in the said events, shall be of no effect.

(3) If, from the information given to any person in pursuance of sub-section (2) or otherwise, he has reasonable ground for supposing that there have or may have been transferred to him under this Chapter rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by the said sub-section on the persons therein mentioned.

(4) The duty to give the information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

Settlement
between
insurers
and insured
persons.

99. (1) No settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability of the nature referred to in clause (b) of sub-section (1) of section 95 shall be valid unless such third party is a party to the settlement.

(2) Where a person who is insured under a policy issued for the purposes of this Chapter has become insolvent, or where, if such insured person is a company, a winding up order has been made or a resolution for a voluntary winding up has been passed with respect to the company no agreement made between the insurer and the insured person after liability has been incurred to a third party and after the commencement of the insolvency or winding up, as the case may be, nor any waiver, assignment or other disposition made by or payment made to the insured person after the commencement aforesaid shall be effective to defeat the rights transferred to the third party under this Chapter, but those rights shall be the same as if no such agreement, waiver, assignment or disposition or payment has been made.

Saving in
respect of
sections 97,
98 and 99.

100. (1) For the purposes of sections 97, 98 and 99, a reference to "liabilities to third parties" in relation to a person insured under any policy of insurance shall not include a reference to any liability of that person in the capacity of insurer under some other policy of insurance.

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Third Party Risks.)

(2) The provisions of sections 97, 98 and 99 shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of an amalgamation with another company.

101. Where a certificate of insurance has been issued to the person by whom a policy has been effected, the happening in relation to any person insured by the policy of any such event as is mentioned in sub-section (1) or sub-section (2) of section 97 shall, notwithstanding anything in this Chapter, not affect any liability of that person of the nature referred to in clause (b) of sub-section (1) of section 95; but nothing in this section shall affect any rights against the insurer conferred under the provisions of sections 97, 98 and 99 on the person to whom the liability was incurred.

Insolvency of insured persons not to affect liability of insured or claims by third parties

XXXIX of
1925.

102. Notwithstanding anything contained in section 306 of the Indian Succession Act, 1925, the death of a person in whose favour a certificate of insurance or cover note had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer.

Effect of death on certain causes of action.

103. When an insurer has issued a certificate of insurance in respect of a contract of insurance between the insurer and the insured person, then—

Effect of certificate of insurance.

(a) if and so long as the policy described in the certificate has not been issued by the insurer to the insured, the insurer shall, as between himself and any other person except the insured, be deemed to have issued to the insured person a policy of insurance conforming in all respects with the description and particulars stated in such certificate; and

(b) if the insurer has issued to the insured the policy described in the certificate, but the actual terms of the policy are less favourable to persons claiming under or by virtue of the policy against the insurer either directly or through the insured than the particulars of the policy as stated in the certificate, the policy shall, as between the insurer and any other person except the insured, be deemed to be in terms conforming in all respects with the particulars stated in the said certificate.

104. (1) Whenever the period of cover under a policy of insurance issued under the provisions of this Chapter is terminated or suspended by any means before its expiration by effluxion of time, the insured person shall within seven days after such termination or suspension

Duty to surrender certificate cancellation of policy.

*(Chapter VIII.—Insurance of Motor Vehicles against
Third Party Risks.)*

deliver to the insurer by whom the policy was issued the latest certificate of insurance given by the insurer in respect of the said policy, or, if the said certificate has been lost or destroyed, make an affidavit to that effect.

(2) Whoever fails to surrender, a certificate of insurance or to make an affidavit, as the case may be, in accordance with the provisions of this section shall be punishable with fine which may extend to fifteen rupees for every day that the offence continues subject to a maximum of five hundred rupees.

Duty of insurer to notify registering authority cancellation or suspension of the policy.

105. Whenever a policy of insurance issued under the provisions of this Chapter is cancelled or suspended by the insurer who has issued the policy, the insurer shall within seven days notify such cancellation or suspension to the registering authority in whose records the registration of the vehicle covered by the policy of insurance is recorded or to such other authority as the ¹[State] Government may prescribe.

Production of certificate of insurance.

106. (1) Any person driving a motor vehicle in any public place shall on being so required by a police officer in uniform produce the certificate of insurance relating to the use of the vehicle:

Provided that if the driver of a motor vehicle within seven days from the date on which the production of the certificate of insurance was so required produces the certificate at such police station as may have been specified by him at the time its production was required he shall not be liable to conviction under this sub-section by reason only of failure to produce the certificate to the police officer.

(2) If, where owing to the presence of a motor vehicle in a public place an accident occurs involving bodily injury to another person, the driver of the vehicle does not at the time produce the certificate of insurance to a police officer, he shall produce the certificate of insurance at the police station at which he makes the report required by section 89:

Provided that no person shall be liable to conviction under this sub-section by reason only of failure to produce his certificate of insurance if within seven days from the occurrence of the accident he produces the certificate at such police station as may be specified by him to the police officer at the site of the accident or to the officer in charge of the police station at which he reported the accident.

¹ Subs. by the Adaptation of Laws Order, 1950, for "Provincial".

(Chapter VIII.—Insurance of Motor Vehicles against
Third Party Risks.)

(3) The owner of a motor vehicle shall give such information as he may be required by or on behalf of a police officer empowered in this behalf by the ¹[State] Government to give for the purpose of determining whether the vehicle was or was not being driven in contravention of section 94 and on any occasion when the driver was required under this section to produce his certificate of insurance.

(4) In this section the expression “produce his certificate of insurance” means produce for examination the relevant certificate of insurance or such other evidence as may be prescribed that the vehicle was not being driven in contravention of section 94.

107. A ¹[State] Government may make rules requiring the owner of any motor vehicle when applying whether by payment of a tax or otherwise for authority to use the vehicle in a public place to produce such evidence as may be prescribed by those rules to the effect that either—

Production of certificate of insurance on application for authority to use vehicle.

(a) on the date when the authority to use the vehicle comes into operation there will be in force the necessary policy of insurance in relation to the use of the vehicle by the applicant or by other persons on his order or with his permission, or

(b) the vehicle is a vehicle to which section 94 does not apply.

II of 1912.

108. (1) A ¹[State] Government may, on the application of a co-operative society of public service vehicle owners registered or deemed to have been registered under the Co-operative Societies Act, 1912, or under an Act of a ¹[State] Legislature governing the registration of Co-operative Societies and subject to the control of the Registrar of Co-operative Societies of the ²[State], allow the society to transact the business of an insurer for the purposes of this Chapter as if the society were an authorised insurer, subject to the following conditions, namely:—

Co-operative Insurance.

(a) the society shall establish and maintain a fund of not less than twenty-five thousand rupees for the first fifty vehicles or fractional part thereof and *pro rata* for every additional vehicle in the possession of members of the society and the said fund shall be lodged in such custody as the ¹[State] Government may prescribe and shall not be

¹ Subs. by the Adaptation of Laws Order, 1950, for “Provincial”.

² Subs. *ibid*, for “Province”.

(Chapter VIII.—Insurance of Motor Vehicles against
Third Party Risks.)

available for meeting claims or other expenses except in the event of the winding up of the society;

- (b) the liability of the society shall be limited as specified in clause (b) of sub-section (2) of section 95;
- (c) the society shall, if required by the ¹[State] Government, re-insure against claims above a prescribed amount;
- (d) the provisions of this Chapter, in so far as they relate to the protection of third parties and to the issue and production of certificates, shall apply in respect of any insurance effected by the society;
- (e) an independent authority not associated with the society shall be appointed by the ¹[State] Government to facilitate and assist in the settling of claims against the society;
- (f) the society shall operate on an insurance basis, that is to say,—
 - (i) it shall levy its premiums in respect of a period not exceeding twelve months, during which period the insured shall be held covered in respect of all accidents arising, subject to the limits of liability specified in clause (b) of sub-section (2) of section 95;
 - (ii) it shall charge premiums estimated to be sufficient, having regard to the risks, to meet the capitalised value of all claims arising during the period of cover, together with an adequate charge for expenses attaching to the issue of policies and to the settlement of claims arising thereunder;
- (g) the society shall furnish to the ²Superintendent of Insurance the returns required to be furnished by insurers under the provisions of the Insurance Act, 1938, and the ³Superintendent of Insurance may exercise in respect thereof any of the powers exercisable by him in respect of returns made to him under the said Act; and

¹ Subs. by the Adaptation of Laws Order, 1950, for "Provincial".

² Now Controller of Insurance: See Amendments made in the Insurance Act, 1938, by Act 47 of 1950.

IV of 1938.

(Chapter VIII.—Insurance of Motor Vehicles against
Third Party Risks.)

(h) any provisions of law applicable to the winding up of authorised insurers shall be equally applicable to the society.

(2) Except as provided in sub-section (1), the Insurance Act, 1938, shall not apply to any co-operative society of public service vehicle owners allowed to transact the business of an insurer under this section.

109. A registering authority or the officer in charge of a police station shall, if so required by a person who alleges that he is entitled to claim compensation in respect of an accident arising out of the use of a motor vehicle, or if so required by an insurer against whom a claim has been made in respect of any motor vehicle, furnish to that person or to that insurer, as the case may be, on payment of the prescribed fee any information at the disposal of the said authority or the said police officer relating to the identification marks and other particulars of the vehicle and the name and address of the person who was using the vehicle at the time of the accident or was injured by it.

110. A ¹[State] Government may, by notification in the official Gazette, appoint a person or a body of persons to investigate and report on accidents involving the death of or bodily injury to any person arising out of the use of motor vehicles and the extent to which their claims to compensation have been satisfied and to advise and assist such persons or their representatives in presenting their claims for compensation:

Provided that nothing in this section shall confer on any such person or body of persons the right to adjudicate in any way on the liability of the insurer or on the amount of damages to be awarded except at the express desire of the insurer concerned.

111. (1) The Central Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

¹ Subs. by the Adaptation of Laws Order, 1950, for "Provincial".

*(Chapter VIII.—Insurance of Motor Vehicles against
Third Party Risks.)*

- (a) the forms to be used for the purposes of this Chapter;
- (b) the making of applications for and the issue of certificates of insurance;
- (c) the issue of duplicates to replace certificates of insurance lost or destroyed;

(Chapter VII.—Motor Vehicles temporarily leaving or visiting the Provinces.)

CHAPTER VII.

MOTOR VEHICLES TEMPORARILY LEAVING OR VISITING ¹[THE PROVINCES].

92. (1) The Central Government may, by notification in the official Gazette, make rules for all or any of the following purposes, namely :—

Power of
Central
Government
to make
rules.

- (a) the grant and authentication of travelling passes, certificates or authorisations to persons temporarily taking motor vehicles out of ¹[the Provinces] to any place outside India or to persons temporarily proceeding out of ¹[the Provinces] to any place outside India and desiring to drive a motor vehicle during their absence ²[from India];
- (b) prescribing the conditions subject to which motor vehicles brought temporarily into ¹[the Provinces] from outside India by persons intending to make a temporary stay in ¹[the Provinces] may be possessed and used in ¹[the Provinces]; and
- (c) prescribing the conditions subject to which persons entering ¹[the Provinces] from any place outside India for a temporary stay in ¹[the Provinces] may drive motor vehicles in ¹[the Provinces].

(2) No rule made under this section shall operate to confer on any person any immunity in any province from the payment of any tax levied in that province on motor vehicles or their users.

(3) Rules made under clauses (b) and (c) of sub-section (1) shall, in case of motor vehicles and persons entering ¹[the Provinces] from the French and Portuguese Settlements bounded by India, be applicable only to motor traffic to which the International Convention relating to motor traffic concluded at Paris on the 24th day of April, 1926 ³[or any convention modifying the same], applies.

(4) Nothing in this Act or in any rule made thereunder by a Provincial Government relating to—

- (a) the registration and identification of motor vehicles, or
- (b) the requirements as to construction, maintenance and equipment of motor vehicles, or
- (c) the licensing and the qualifications of drivers of motor vehicles

shall apply to any motor vehicle to which or to any driver of a motor vehicle to whom any rules made under clause (b) or clause (c) of sub-section (1) apply.

¹ Subs. by the A.O. 1948 for "British India".

² Subs. by the A.O. 1948 for "from British India".

³ Ins. by s. 19 of the Motor Vehicles (Amendment) Act, 1942 (20 of 1942).

(Chapter VIII.—Insurance of Motor Vehicles against
Third Party Risks.)

CHAPTER VIII.

INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS.

Definitions. 93. In this Chapter—

- ¹[(a) “authorised insurer” means an insurer in whose case the requirements of the Insurance Act, 1938, or of the corresponding law of a reciprocating territory with respect to the registration of insurers are complied with, and includes, where the business of insuring motor vehicles against third party risks is carried on by the Central Government or a Provincial Government or the Government of an ²[Acceding State or other Indian State] which is a reciprocating territory, such Government],
- (b) “certificate of insurance” means a certificate issued by an authorised insurer in pursuance of sub-section (4) of section 95; and includes ³[a cover note complying with such requirements as may be prescribed, and] where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be,
- ³[(c) “reciprocating territory” means any ⁴[such Acceding State or other Indian State] as may be notified by the Central Government in the official Gazette to be a reciprocating territory for the purposes of this Chapter].

Necessity for
insurance
against third
party risk.

94. (1) No person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter.

Explanation.—A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.

⁵[(2) Subject to any prescribed conditions, sub-section (1) shall not apply to any vehicle owned by any of the following authorities, namely:—

(i) the Central Government;

¹ Subs. by s. 2 of the Motor Vehicles (Amendment) Act, 1947 (27 of 1947) for the original clause (with effect from 1-9-47).

² Subs. by the A.O. 1948 for “Indian State”.

³ Ins. by s. 2 of Act 27 of 1947 (with effect from 1-9-47).

⁴ Subs. by the A.O. 1948 for “such Indian State or such area administered by the Crown Representative”.

⁵ Subs. by s. 3 of Act 27 of 1947, for the original sub-section (with effect from 1-9-47)

(Chapter VIII.—Insurance of Motor Vehicles against
Third Party Risks.)

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(iii) any Provincial Government;

(iv) the Government of ²[any Acceding State or other Indian State];

(v) the Government of the French or Portuguese Settlements bounded by India;

(vi) any local authority in ³[a Province of India] exempted from the operation of sub-section (1) by order of the Central Government or of a Provincial Government;

(vii) any local authority established or continued by the authority of the ⁴[Central Government in the exercise of its extra-provincial jurisdiction] exempted from the operation of sub-section (1) by order of the Central Government;

(viii) any local authority in an ⁵[Acceding State or other Indian State] wherein policies of insurance are required by provision of law to be taken out in relation to the use of motor vehicles, which has been exempted from the operation of such provision.]

95. (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

Require-
ments of
policies and
limits of
liability.

(a) is issued by a person who is an authorised insurer ⁶[or by a co-operative society allowed under section 108 to transact the business of an insurer], and

(b) insures the person or classes of person specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place ⁶[in ³the Provinces] or in a reciprocating territory]:

Provided that a policy shall not, ⁷* * * be required—

(i) of cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment ⁶[other than a liability arising

¹ Item (ii) "the Crown Representative" rep. by the A.O. 1948.

² Subs. by the A.O. 1948 for "any Indian State".

³ Subs. by the A.O. 1948 for "British India".

⁴ Subs. by the A.O. 1948 for "Crown Representative"

⁵ Subs. by the A.O. 1948 for "Indian State".

⁶ Ins. by s. 4 of the Motor Vehicles (Amendment) Act, 1947 (27 of 1947) (with effect from 1-9-47).

⁷ The words "except as may be otherwise provided under sub-section (3)" rep. ~~and~~ (with effect from 1-9-47).

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Third Party Risks.)

under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, any such employee—

- (a) engaged in driving the vehicle, or
- (b) if it be a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or
- (c) if it be a goods vehicle, being carried in the vehicle], or
- (ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or
- (iii) to cover any contractual liability.

(2) Subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely:—

- ¹[(a) where the vehicle is a goods vehicle, a limit of twenty thousand rupees in all, the liabilities, if any, arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, employees other than the driver being carried in the vehicle being limited to six such employees;]
- (b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, in respect of persons other than passengers carried for hire or reward, a limit of twenty thousand rupees; and in respect of passengers a limit of twenty thousand rupees in all, and four thousand rupees in respect of an individual passenger, if the vehicle is registered to carry not more than six passengers excluding the driver or two thousand rupees in respect of an individual passenger, if the vehicle is registered to carry more than six passengers excluding the driver;
- (c) where the vehicle is a vehicle of any other class the amount of the liability incurred.

2 *

(4) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person

¹ Subs. by s. 4 of the Motor Vehicles (Amendment) Act, 1947 (27 of 1947) for the original clause (with effect from 1-9-47).

² Sub-section (3) rep., *ibid.* (with effect from 1-9-47).

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by whom the policy is effected a certificate of insurance¹ * * * in the prescribed form and containing the prescribed particulars of any conditions subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of person.

96. (1) If, after a certificate of insurance² * * * has been issued under sub-section (4) of section 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding e.g., that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

Duty of
insurers to
satisfy
judgments
against per-
sons insured
in respect of
third party
risks.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the Court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—

- (a) that the policy was cancelled by mutual consent or by virtue of any provision contained therein before the accident giving rise to the liability, and that either the certificate of insurance was surrendered to the insurer or that the person to whom the certificate was issued has made an affidavit stating that the certificate has been lost or destroyed, or that either before or not later than fourteen days after the happening of the accident the insurer has commenced proceedings for cancellation of the certificate after compliance with the provisions of section 105; or

¹ The words "or a cover note" rep. by s. 4 of the Motor Vehicles (Amendment) Act, 1947 (27 of 1947) (with effect from 1-9-47).

² The words "or a cover note" rep. by s. 5, *ibid*, (with effect from 1-9-47).

(Chapter VIII.—Insurance of Motor Vehicles against
Third Party Risks.)

- (b) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—
- (i) a condition excluding the use of the vehicle—
 - (a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or
 - (b) for organised racing and speed testing, or
 - (c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a public service vehicle or a goods vehicle, or
 - (d) without side-car being attached, where the vehicle is a motor cycle; or
 - (ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or
 - (iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or
- (c) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

¹[(21) Where any such judgment as is referred to in sub-section (1) is obtained from a Court in a reciprocating territory and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908, conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938, and whether or not he is registered under the corresponding law of the reciprocating territory) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1) as if the judgment were given by a Court in ²[the Provinces]:

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before or after the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court in the reciprocating territory of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating territory, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).]

(3) Where a certificate of insurance ³ * * * has been issued under sub-section (4) of section 95 to the person by whom a policy has been

¹ Ins. by s. 5 of the Motor Vehicles (Amendment) Act, 1947 (27 of 1947) (with effect from 1-9-47).

² Subs. by the A.O. 1948, for "British India".

³ The words "or cover note" rep. by s. 5 of Act 27 of 1947 (with effect from 1-9-47).

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Third Party Risks.)*

effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 95, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(5) In this section the expressions "material fact" and "material particular" mean, respectively, a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(6) No insurer to whom the notice referred to in sub-section (2) ¹[or sub-section (2A)] has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment as is referred to in sub-section (1) ¹[or sub-section (2A)] otherwise than in the manner provided for in sub-section (2) ¹[or in the corresponding law of the reciprocating territory, as the case may be.]

97. (1) Where under any contract of insurance effected in accordance with the provisions of this Chapter a person is insured against liabilities which he may incur to third parties then—

Rights of
third parties
against
insurers on
insolvency of
the insured.

(a) in the event of the person becoming insolvent or making a composition or arrangement with his creditors, or

(b) where the insured person is a company, in the event of a winding up order being made or a resolution for a voluntary winding up being passed with respect to the company or of a receiver or manager of the company's business or undertaking being duly appointed, or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge,

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Third Party Risks.)*

if, either before or after that event, any such liability is incurred by the insured person, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order for the administration of the estate of a deceased debtor is made according to the law of insolvency, then, if any debt provable in insolvency is owing by the deceased in respect of a liability to a third party against which he was insured under a contract of insurance in accordance with the provisions of this Chapter, the deceased debtor's rights against the insurer in respect of that liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the person to whom the debt is owing.

(3) Any condition in a policy issued for the purposes of this Chapter purporting either directly or indirectly to avoid the policy or to alter the rights of the parties thereunder upon the happening to the insured person of any of the events specified in clause (a) or clause (b) of sub-section (1) or upon the making of an order for the administration of the estate of a deceased debtor according to the law of insolvency shall be of no effect.

(4) Upon a transfer under sub-section (1) or sub-section (2) the insurer shall be under the same liability to the third party as he would have been to the insured person, but—

- (a) if the liability of the insurer to the insured person exceeds the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the insured person against the insurer in respect of the excess, and
- (b) if the liability of the insurer to the insured person is less than the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the third party against the insured person in respect of the balance.

Duty to give
information
as to insu-
rance.

98. (1) No person against whom a claim is made in respect of any liability referred to in clause (b) of sub-section (1) of section 95 shall on demand by or on behalf of the person making the claim refuse to state whether or not he was insured in respect of that liability by any policy issued under the provisions of this Chapter, or would have been so insured if the insurer had not avoided or cancelled the policy, nor shall he refuse, if he was or would have been so insured, to give such particulars with respect to that policy as were specified in the certificate of insurance issued in respect thereof.

(2) In the event of any person becoming insolvent or making a composition or arrangement with his creditors or in the event of an order being made for the administration of the estate of a deceased person according to the law of insolvency, or in the event of a winding up order being made or a resolution for a voluntary winding up being

(Chapter VIII.—Insurance of Motor Vehicles against
Third Party Risks.)

passed with respect to any company or of a receiver or manager of the company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge on any property comprised in or subject to the charge, it shall be the duty of the insolvent debtor, personal representative of the deceased debtor or company, as the case may be, or the official assignee or receiver in insolvency, trustee, liquidator, receiver or manager, or person in possession of the property to give at the request of any person claiming that the insolvent debtor, deceased debtor or company is under such liability to him as is covered by the provisions of this Chapter, such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by section 97, and for the purpose of enforcing such rights, if any ; and any such contract of insurance as purports whether directly or indirectly to avoid the contract or to alter the rights of the parties thereunder upon the giving of such information in the events aforesaid, or otherwise to prohibit or prevent the giving thereof in the said events, shall be of no effect.

(3) If, from the information given to any person in pursuance of sub-section (2) or otherwise, he has reasonable ground for supposing that there have or may have been transferred to him under this Chapter rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by the said sub-section on the persons therein mentioned.

(4) The duty to give the information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

99. (1) No settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability of the nature referred to in clause (b) of sub-section (1) of section 95 shall be valid unless such third party is a party to the settlement.

Settlement
between
insurers and
insured
persons.

(2) Where a person who is insured under a policy issued for the purposes of this Chapter has become insolvent, or where, if such insured person is a company, a winding up order has been made or a resolution for a voluntary winding up has been passed with respect to the company no agreement made between the insurer and the insured person after liability has been incurred to a third party and after the commencement of the insolvency or winding up, as the case may be, nor any waiver, assignment or other disposition made by or payment made to the insured person after the commencement aforesaid shall be effective to defeat the rights transferred to the third party under this Chapter, but those rights shall be the same as if no such agreement, waiver, assignment or disposition or payment has been made.

(Chapter VIII.—Insurance of Motor Vehicles against Third Party Risks.)

Saving in respect of sections 97, 98 and 99.

100. (1) For the purposes of sections 97, 98 and 99, a reference to "liabilities to third parties" in relation to a person insured under any policy of insurance shall not include a reference to any liability of that person in the capacity of insurer under some other policy of insurance.

(2) The provisions of section 97, 98 and 99 shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of an amalgamation with another company.

Insolvency of insured persons not to affect liability of insured or claims by third parties.

101. Where a certificate of insurance has been issued to the person by whom a policy has been effected, the happening in relation to any person insured by the policy of any such event as is mentioned in sub-section (1) or sub-section (2) of section 97 shall, notwithstanding anything in this Chapter, not affect any liability of that person of the nature referred to in clause (b) of sub-section (1) of section 95; but nothing in this section shall affect any rights against the insurer conferred under the provisions of sections 97, 98 and 99 on the person to whom the liability was incurred.

Effect of death on certain causes of action.

102. Notwithstanding anything contained in section 306 of the Indian Succession Act, 1925, the death of a person in whose favour a certificate of insurance ^{1***} had been issued, if it occurs after the ^{XXXIX of 1925.} happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer.

Effect of certificate of insurance.

103. When an insurer has issued a certificate of insurance in respect of a contract of insurance between the insurer and the insured person, then—

(a) if and so long as the policy described in the certificate has not been issued by the insurer to the insured, the insurer shall, as between himself and any other person except the insured, be deemed to have issued to the insured person a policy of insurance conforming in all respects with the description and particulars stated in such certificate; and

(b) if the insurer has issued to the insured the policy described in the certificate, but the actual terms of the policy are less favourable to persons claiming under or by virtue of the policy against the insurer either directly or through the insured than the particulars of the policy as stated in the certificate, the policy shall, as between the insurer and any other person except the insured, be deemed to be in terms conforming in all respects with the particulars stated in the said certificate.

¹ The words "or cover note" rep. by s. 6 of the Motor Vehicles (Amendment) Act, 1947 (27 of 1947) (with effect from 1-9-47).

(Chapter VIII.—Insurance of Motor Vehicles against Third Party Risks.)

104. (1) Whenever the period of cover under a policy of insurance issued under the provisions of this Chapter is terminated or suspended by any means before its expiration by effluxion of time, the insured person shall within seven days after such termination or suspension deliver to the insurer by whom the policy was issued the latest certificate of insurance given by the insurer in respect of the said policy, or, if the said certificate has been lost or destroyed, make an affidavit to that effect.

Duty to surrender certificate on cancellation of policy.

(2) Whoever fails to surrender a certificate of insurance or to make an affidavit, as the case may be, in accordance with the provisions of this section shall be punishable with fine which may extend to fifteen rupees for every day that the offence continues subject to a maximum of five hundred rupees.

105. Whenever a policy of insurance issued under the provisions of this Chapter is cancelled or suspended by the insurer who has issued the policy, the insurer shall within seven days notify such cancellation or suspension to the registering authority in whose records the registration of the vehicle covered by the policy of insurance is recorded or to such other authority as the Provincial Government may prescribe.

Duty of insurer to notify registering authority cancellation or suspension of the policy.

106. (1) Any person driving a motor vehicle in any public place shall on being so required by a police officer in uniform [authorised in this behalf by the Provincial Government] produce the certificate of insurance relating to the use of the vehicle:

Production of certificate of insurance.

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(2) If, where owing to the presence of a motor vehicle in a public place an accident occurs involving bodily injury to another person, the driver of the vehicle does not at the time produce the certificate of insurance to a police officer, he shall produce the certificate of insurance at the police station at which he makes the report required by section 89:

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*

(2A) No person shall be liable to conviction under sub-section (1) or sub-section (2) by reason only of the failure to produce the certificate of insurance if, within seven days from the date on which its production was required under sub-section (1) or, as the case may be, from the date of occurrence of the accident, he produces the certificate at such police station as may have been specified by him to the police officer who required its production or, as the case may be, to the police officer at the site of the accident or to the officer in charge of the police station at which he reported the accident:

Provided that, except to such extent and with such modifications as may be prescribed, the provisions of this sub-section shall not apply to the driver of a transport vehicle.]

¹ Ins. by s. 7 of the Motor Vehicles (Amendment) Act, 1947 (27 of 1947) (with effect from 1-9-47).

² The Proviso was rep., *ibid* (with effect from 1-9-47).

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(3) The owner of a motor vehicle shall give such information as he may be required by or on behalf of a police officer empowered in this behalf by the Provincial Government to give for the purpose of determining whether the vehicle was or was not being driven in contravention of section 94 and on any occasion when the driver was required under this section to produce his certificate of insurance.

(4) In this section the expression "produce his certificate of insurance" means produce for examination the relevant certificate of insurance or such other evidence as may be prescribed that the vehicle was not being driven in contravention of section 94.

Production of certificates of insurance on application for authority to use vehicle.

107. A Provincial Government may make rules requiring the owner of any motor vehicle when applying whether by payment of a tax or otherwise for authority to use the vehicle in a public place to produce such evidence as may be prescribed by those rules to the effect that either—

(a) on the date when the authority to use the vehicle comes into operation there will be in force the necessary policy of insurance in relation to the use of the vehicle by the applicant or by other persons on his order or with his permission, or

(b) the vehicle is a vehicle to which section 94 does not apply.

Co-operative Insurance.

108. (1) A Provincial Government may, on the application of a co-operative society of ¹[transport vehicle] owners registered or deemed to have been registered under the Co-operative Societies Act, 1912, or under an Act of a Provincial Legislature governing the registration of Co-operative Societies and subject to the control of the Registrar of Co-operative Societies of the province, allow the society to transact the business of an insurer for the purposes of this Chapter ²* * *, subject to the following conditions, namely:—

II of 1912.

(a) the society shall establish and maintain a fund of not less than twenty-five thousand rupees for the first fifty vehicles or fractional part thereof and *pro rata* for every additional vehicle in the possession of members of ³[and insured with,] the society and the said fund shall be lodged in such custody as the Provincial Government may prescribe and shall not be available for meeting claims or other expenses except in the event of the winding up of the society;

⁴[(b) the insurance business of the society shall except to the extent permitted under clause (cc) be limited to transport vehicles

¹ Subs. by s. 8 of the Motor Vehicles (Amendment) Act, 1947 (27 of 1947) for "public service vehicle" (with effect from 1-9-47).

² The words "as if the society were an authorised insurer" rep., *ibid* (with effect from 1-9-47).

³ Ins., *ibid* (with effect from 1-9-47).

(Chapter VIII.—Insurance of Motor Vehicles against Third Party Risks.)

owned by its members, and its liability shall be limited as specified in sub-section (2) of section 95;]

- (c) the society shall, if required by the Provincial Government, re-insure against claims above ¹[such amount as may be specified by the Provincial Government;]
- ²[(c)] the society may, if permitted by the Provincial Government and subject to such conditions and limitations as may be imposed by it, accept reinsurances from other societies allowed to transact the business of an insurer under this section;]
- (d) the provisions of this Chapter, in so far as they relate to the protection of third parties and to the issue and production of certificates, shall apply in respect of any insurance effected by the society;
- (e) an independent authority not associated with the society shall be appointed by the Provincial Government to facilitate and assist in the settling of claims against the society;
- (f) the society shall operate on an insurance basis, that is to say,—
 - (i) it shall levy its premiums in respect of a period not exceeding twelve months, during which period the insured shall be held covered in respect of all accidents arising, subject to the limits of liability specified in ³*** sub-section (2) of section 95;
 - (ii) it shall charge premiums estimated to be sufficient, having regard to the risks, to meet the capitalised value of all claims arising during the period of cover, together with an adequate charge for expenses attaching to the issue of policies and to the settlement of claims arising thereunder;
- (g) the society shall furnish to the Superintendent of Insurance the returns required to be furnished by insurers under the provisions of the Insurance Act, 1938, and the Superintendent of Insurance may exercise in respect thereof any of the powers exercisable by him in respect of returns made to him under the said Act; and
- ⁴[(h)] the society shall, in respect of any business transacted by it of the nature referred to in clause (i) of the proviso to sub-section (1) of section 95, be deemed to be an insurer within

IV of 1938.

¹ Subs. by s. 8 of the Motor Vehicles (Amendment) Act, 1947 (27 of 1947), for "a prescribed amount" (with effect from 1-9-47).

² Ins., *ibid* (with effect from 1-9-47).

³ The words, figure and brackets "clause (b) of" rep., *ibid* (with effect from 1-9-47).

⁴ Subs. *ibid*, for the original clause (with effect from 1-9-47.)

(Chapter VIII.—Insurance of Motor Vehicles against Third Party Risks.)

the meaning of sub-section (1) of section 10 and sub-section (6) of section 13 of the Insurance Act, 1938.

IV of 193 s.

- ¹(2) The provisions of the Insurance Act, 1938, relating to the winding up of insurance companies shall, to the exclusion of any other law inconsistent therewith and subject to such modifications as may be prescribed, apply to the winding up of a co-operative society allowed to transact the business of an insurer under this section as if it were an insurance company; but save as hereinbefore provided, the Insurance Act, 1938, shall not apply to any such society.]

IV of 1938.

IV of 1938.

Duty to furnish particulars of vehicle involved in accident.

109. A registering authority or the officer in charge of a police station shall, if so required by a person who alleges that he is entitled to claim compensation in respect of an accident arising out of the use of a motor vehicle, or if so required by an insurer against whom a claim has been made in respect of any motor vehicle, furnish to that person or to that insurer, as the case may be, on payment of the prescribed fee any information at the disposal of the said authority or the said police officer relating to the identification marks and other particulars of the vehicle and the name and address of the person who was using the vehicle at the time of the accident or was injured by it.

Power to appoint persons to investigate and report on accidents.

110. A Provincial Government may, by notification in the official Gazette, appoint a person or a body of persons to investigate and report on accidents involving the death of or bodily injury to any person arising out of the use of motor vehicles and the extent to which their claims to compensation have been satisfied and to advise and assist such persons or their representatives in presenting their claims for compensation:

Provided that nothing in this section shall confer on any such person or body of persons the right to adjudicate in any way on the liability of the insurer or on the amount of damages to be awarded except at the express desire of the insurer concerned.

Power to make rules.

111. (1) The Central Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the forms to be used for the purposes of this Chapter;
- (b) the making of applications for and the issue of certificates of insurance;
- (c) the issue of duplicates to replace certificates of insurance²[mutilated, defaced,] lost or destroyed;

¹ Subs. by s. 8 of the Motor Vehicles (Amendment) Act, 1947 (27 of 1947), for the original sub-section (with effect from 1-9-47).

² Ins. by s. 9, *ibid* (with effect from 1-9-47).¹

(Chapter VIII.—Insurance of Motor Vehicles against Third Party Risks.—Chapter IX.—Offences, Penalties and Procedure.)

- (d) the custody, production, cancellation and surrender of certificates of insurance;
- (e) the records to be maintained by insurers of policies of insurance issued under this Chapter;

Power of
State Gov-
ernment to
make rules.

(f) the identification by certificates of motor vehicles.
“111A. A State Government may make rules for the purpose of carrying into effect the provisions of sections 110 to 110E, and in particular, such rules may provide for all or any of the following matters, namely:—

(a) the form of application for claims for compensation and the particulars it may contain; and the fees, if any, to be paid in respect of such applications;

(b) the procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter;

(c) the powers vested in a civil court which may be exercised by a Claims Tribunal;

(d) the form and manner in which an appeal may be preferred against an award of a Claims Tribunal; and

(e) any other matter which is to be, or may be, prescribed.”

Sip

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al pro-
i for
ument
or offences.

... previously convicted of any offence under this Act he is again convicted of an offence under this Act, with fine which may extend to ~~one~~ three

“113. (1) Whoever wilfully disobeys any direction lawfully given by any person or authority empowered under this Act to give such direction, or obstructs any person or authority in the discharge of any functions which such person or authority is required or empowered under this Act to discharge, shall, if no other penalty is provided for the offence, be punishable with fine which may extend to five hundred rupees.

Disobedience
of orders,
obstruction
and refusal
of informa-
tion.

Disobedience
of orders,
obstruction
and refusal
of informa-
tion.

(2) Whoever, being required by or under this Act to supply any information, wilfully withholds such information or gives information which he knows to be false or which he does not believe to be true, shall, if no other penalty is provided for the offence, be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.”

ffences
lating to
cences.

* Subs. by the A.O. 1948 for “British India.”

² For special mode of construction with reference to rules made under the Indian Motor Vehicles Act, 1914, see s. 134 (5), *infra*.

Driving at
excessive
speed.

114 "(2) Whoever, being disqualified under this Act, for holding or obtaining a conductor's licence, acts as a conductor of a stage carriage in a public place or applies for or obtains a conductor's licence, or, not being entitled to have a conductor's licence issued to him free of endorsement, applies for or obtains a conductor's licence without disclosing the endorsements made on a conductor's licence previously held by him shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both, and any conductor's licence so obtained by him shall be of no effect." C.A. 100/5

to his control in driving to drive a motor vehicle in contravention of section 71 shall be punishable with fine which may extend to two hundred rupees.

(3) No person shall be convicted of an offence punishable under sub-section (1) solely on the evidence of one witness to the effect that in the opinion of the witness such person was driving at a speed which was unlawful, unless that opinion is shown to be based on an estimate obtained by the use of some mechanical timing device. 109/56

(4) The publication of a time table under which, or the giving of any direction that, any journey or part of a journey is to be completed within a specified time shall, if in the opinion of the Court it is not practicable in the circumstances of the case for that journey or part of a journey to be completed in the specified time without infringing the provisions of section 71, be *prima facie* evidence that the person who published the time table or gave the direction has committed an offence punishable under sub-section (2).

Driving
recklessly or
dangerously.

116. Whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable on a first conviction for the offence with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, and for a subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Driving
while under
the influence
of drink or
drugs.

117. Whoever while driving or attempting to drive a motor vehicle is under the influence of drink or a drug to such an extent as to be incapable of exercising proper control over the vehicle, shall be punishable for a first offence with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both, and for a subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Driving when
mentally or
physically
unfit to drive

118. Whoever drives a motor vehicle in any public place when he is to his knowledge suffering from any disease or disability calculated to cause his driving of the vehicle to be a source of danger to the public,

Punishment
for offences
relating to
accident.

(C) 1. 77 Offences, Penalties and Procedure.)

"118A. Whoever fails to comply with the provisions of clause (c) of sub-section (1) of section 87 or of section 88 or section 89 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both or, if having been previously convicted of an offence under this section, he is again convicted of an offence under this section, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

sent
ment
n
and

vehicles in any public place shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to three hundred rupees, or with both.

121. Any person who drives or causes or allows to be driven in any public place a motor vehicle or trailer while the vehicle or trailer has any defect, which such person knows of or could have discovered by the exercise of ordinary care and which is calculated to render the driving of the vehicle a source of danger to persons and vehicles using such place, shall be punishable with fine which may extend to two hundred and fifty rupees or, if as a result of such defect an accident is caused causing bodily injury or damage to property, with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees.

Using vehi-
cle in unsafe
condition.

Using vehi-
cle without
registration
or permit.

"123. (1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of section 22 or without the permit required by sub-section (1) of section 42 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, shall be punishable for a first offence with fine which may extend to one thousand rupees and for a subsequent offence if committed within three years of the commission of a previous similar offence, with imprisonment which may extend to six months or with fine which may extend to two thousand rupees, or with both:

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nditi n
ntra ening
is Act.

109/56

Provided that no court shall, except for reasons to be stated in writing, impose a fine of less than five hundred rupees for any such subsequent offence.

Using vehi-
cle without
permit.

(2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injury or for the transport

section (1) may set aside or vary any order or suspension or cancellation made under sub-section (3) by the court below and the court, to which appeals ordinarily lie from the court below, may set aside or vary any such order of suspension or cancellation made by the court below, notwithstanding that no appeal lies against the conviction in connection with which such order was made."

(Chapter IX.—Offences, Penalties and Procedure.)

Provided that the person using the vehicle reports such use to the Regional Transport Authority within seven days.

Driving
vehicle ex-
ceeding per-
missible
weight.

124. Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 72 or of the conditions of any permit issued thereunder, or in contravention of any prohibition or restriction imposed under section 74 shall be punishable for a first offence with fine which may extend to ~~one~~ ^{two} hundred rupees, and for a second or subsequent offence with fine which may extend to ~~five hundred rupees~~ ^{one thousand rupees}.

Driving
uninsured
vehicle.

125. Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 94 shall be punishable with imprisonment which may extend to three months, or with fine which may extend to ~~five hundred~~ ^{one thousand} rupees, or with both.

Taking
vehicle
without
authority.

126. Whoever takes and drives away any motor vehicle without having either the consent of the owner thereof or other lawful authority shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both:

Unautho-
rised inter-
ference wit
vehicle.

127A. (1) If the person contravening any provision of this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. Offences by companies.

Power of
arrest
without
warrant.

Provided that nothing in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”.

(Chapter IX.—Offences, Penalties and Procedure.)

(3) A police officer arresting without warrant the driver of a motor vehicle shall, if the circumstances so require, take or cause to be taken any steps he may consider proper for the temporary disposal of the vehicle.

XLV of 1860. 129. (1) Any police officer authorised in this behalf or other person authorised in this behalf by the Provincial Government may, if he has reason to believe that any identification mark carried on a motor vehicle or any licence, permit, certificate of registration, certificate of insurance or other document produced to him by the driver or person in charge of a motor vehicle is a false document within the meaning of section 464 of the Indian Penal Code, seize the mark or document and call upon the driver or owner of the vehicle to account for his possession of or the presence in the vehicle of such mark or document.

Power of police officer to impound document.

(2) Any police officer authorised in this behalf ^{or other person authorised in this behalf} by the Provincial Government may, if he has reason to believe that the driver of a motor vehicle who is charged with any offence under this Act may abscond or otherwise avoid the service of a summons, seize any licence held by such driver and forward it to the Court taking cognizance of the offence, ^{and the said Court shall on the first appearance of such driver before} ^{when the licence to him in exchange for the temporary acknowledgment given under}

10/5/56

(3) A police officer ^{or other person} seizing a licence under sub-section (2) shall give to the person surrendering the licence a temporary acknowledgment therefor and such acknowledgment shall authorise the holder to drive until the licence has been returned to him ^{Sub-sec. (2)} ~~on the Court has~~

(ii) for the words "or the Court has otherwise ordered", the following shall be substituted, namely:—

10/3/56

"or until such date as may be specified by the police officer or other person in the acknowledgment, whichever is earlier:

Provided that if any Magistrate, police officer or other person authorised by the State Government in this behalf is, on an application made to him, satisfied that the licence cannot be, or has not been, returned to the holder thereof before the date specified in the acknowledgment for any reason for which the holder is not responsible, the Magistrate, police officer or other person, as the case may be, may extend the period of authorisation to drive to such date as may be specified in the acknowledgment."

Person Power to
if he detain
used vehicles used
22 or without
or in certificate of
route registration
or permit.
Vehicle
take
mpo-

Act Summary
Fifth disposal of
person cases.

(a) may appear by pleader and not in person, or

(b) may by a specified date prior to the hearing of the charge plead guilty to the charge by registered letter and remit to the Court such sum not exceeding twenty-five rupees as the Court may specify.

(Chapter IX.—Offences, Penalties and Procedure.
Chapter X.—Miscellaneous.)

(2) Where the offence dealt with in accordance with sub-section (1) is an offence specified in Part B of the Fifth Schedule, the accused person shall, if he pleads guilty to the charge, forward his licence to the Court with the letter containing his plea in order that the conviction may be endorsed on the licence.

(3) Where an accused person pleads guilty and remits the sum specified and has complied with the provisions of sub-section (2), no further proceedings in respect of the offence shall be taken against him, nor shall he be liable to be disqualified for holding or obtaining a licence by reason of his having pleaded guilty.

Restriction
on convic-
tion.

131. No person prosecuted for an offence punishable under section 115 or section 116 shall be convicted unless—

- (a) he was warned at the time the offence was committed that the question of prosecuting him would be taken into consideration, or
- (b) within fourteen days from the commission of the offence, a notice specifying the nature of the offence and the time and place where it is alleged to have been committed was served on or sent by registered post to him or the person registered as the owner of the vehicle at the time of the commission of the offence, or
- (c) within twenty-eight days of the commission of the offence, a summons for the offence was served on him:

Provided that nothing in this section shall apply where the Court is satisfied that—

- (a) the failure to serve the notice or summons referred to in this sub-section was due to the fact that neither the name and address of the accused nor the name and address of the registered owner of the vehicle could with reasonable diligence have been ascertained in time, or
- (b) such failure was brought about by the conduct of the accused.

Jurisdiction
of Courts.

132. No Court inferior to that of a Presidency Magistrate or a Magistrate of the second class shall try any offence punishable under this Act or any rule made thereunder.

CHAPTER X.

MISCELLANEOUS.

Publication
of and com-
mencement
of rules.

133. (1) Every power to make rules given by this Act is subject to the condition of the rules being made after previous publication.

(Chapter X.—Miscellaneous.)

(2) All rules made under this Act shall be published in the official Gazette, and shall, unless some later date is appointed, come into force on the date of such publication.

(3) All rules made under this Act by the Central Government or by any Provincial Government shall be laid for not less than fourteen days before the Central or Provincial Legislature, as the case may be, as soon as possible after they are made, and shall be subject to such modifications as the Legislature may make during the session in which they are so laid.

Parliament
or the
State
11/1/57

[133A. (1) The ^{State} Provincial Government may, for the purpose of carrying into effect the provisions of this Act, establish a Motor Vehicles Department and appoint as officers thereof such persons as it thinks fit.

Appoint-
ment of
motor vehi-
cles officer.

XLV of 1860.

(2) Every such officer shall be deemed to be a public servant within the meaning of the Indian Penal Code.

(3) The ^{State} Provincial Government may make rules to regulate the discharge by officers of the Motor Vehicles Department of their functions and in particular and without prejudice to the generality of the foregoing power to prescribe the uniform to be worn by them the authorities to which " " " "

"134. (1) Where an appeal has been preferred or an application for revision has been made against any order passed by an original authority under this Act, the appeal or the application for revision shall not operate as a stay of the order passed by the original authority and such order shall remain in force pending the disposal of the appeal or the application for revision, as the case may be, unless the prescribed appellate authority or revisional authority otherwise directs.

381.

(2) No order made by a competent authority under this Act shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings, unless it appears to the prescribed appellate authority or revisional authority, as the case may be, that such error, omission or irregularity has, in fact, occasioned a failure of justice.”.

¹ Ins. by s. 21 of the Motor Vehicles (Amendment) Act, 1942, (20 of 1942).

2 Sub-section (2) which had been subs. for the original sub-section by s. 8 of the Motor Vehicles (Amendment) Act, 1939 (40 of 1939) (with effect from 1st July 1939) was rep. by s. 22 of the Motor Vehicles (Amendment) Act, 1942 (20 of 1942).

3 Sub-section (4) rep. by s. 22 of Act 20 of 1942.

4 Sub-section (5) which had been ins. by s. 8 of Act 40 of 1939 (which Act, from 1st July, 1939) was rep. by s. 22 of Act 20 of 1942.

98. In the First Schedule to the principal Act,— Amendment
of First
Schedule.
(a) for Form A, the following Form shall be substituted, namely:—

“FORM A

[See section 7 (2)]

Form of application for licence to drive a motor vehicle.

I

Application.

I apply for a licence to enable me to drive *as a paid employee *public service vehicles, *goods vehicles, the

II

Particulars to be furnished by the applicant.

1. Full name and name of father or husband.....
2. Permanent address
3. Temporary address
4. Age at the date of application.....
5. Have you previously held licence? If so, give particulars of all licences held.....
6. Has any licence held by you been endorsed? If so, give particulars and the date of each endorsement.....
7. Have you been disqualified for obtaining a licence to drive? If so, for what reason.....
8. Have you been subjected to driving test as to your fitness or ability to drive a vehicle in respect of which a licence to drive is applied for? If so, give date, testing authority and result of test.....

III

Declaration as to physical fitness of applicant and knowledge of driving regulations and traffic signs.

The applicant is required to answer “Yes” or “No” in the space provided opposite each question.

- (a) Do you suffer from epilepsy, or from sudden attacks of disability, giddiness or fainting?

*Strike out whichever is not applicable,

~~Have you lost control of hand or foot or are you suffering from any
ment, control, or muscular power of either arm or leg?~~

(The First Schedule.)

If (d) Can you readily distinguish the pigmentary colours red and green?
 () Do you suffer from night blindness?

the classes entered in my licence to be a source of danger to the public.

Dated

19 .

Signature or thumb impression of applicant.

Address

Note:—The fee for the renewal of a licence is fixed by section 11 of the Motor Vehicles Act, 1939, reproduced on the reverse.

(Reverse)

Renewal of driving licences. 11. (1) Any licensing authority may, on an application made to it, renew a driving licence issued under the

(c) for Form B, the following Form shall be substituted, namely:—

"FORM B

C.A/10456

[See section 11 (2)]

Form of application for the renewal of driving licence

I hereby apply for the renewal of my driving licence which is attached, and particulars of which are as follows:—

(a) Number.

(b) Date of issue.

(c) Licensing Authority by which licence was issued.

My present address is

If this address is not entered on the licence I do/do not wish that it should be so entered.

If the licence is not attached, reasons why it is not available.

If the licence was not renewed within 30 days of the date of expiry, full reasons for the delay.

The renewal of the licence has not been refused by any licensing authority.

I hereby declare that I am not subject to any disease or disability likely to cause my driving of motor vehicles of

section.

Provided further that if the application is made more than five years after the licence has ceased to be effective, the licensing authority may refuse to renew the driving licence, unless the applicant undergoes and passes to its satisfaction the test of competence to drive specified in the Third Schedule.

(The First Schedule.)

FORM C.

[See section 7 (3) and section 12.]

Form of medical certificate in respect of an applicant for a licence to drive any transport vehicle or to drive any vehicle as a paid employee.

(To be filled up by a registered medical practitioner.)

1. What is the applicant's apparent age?
2. Is the applicant, to the best of your judgment, subject to epilepsy, vertigo or any mental ailment likely to affect his efficiency?
3. Does the applicant suffer from any heart or lung disorder which might interfere with the performance of his duties as a driver?
1. (a) Is there any defect of vision? If so, has it been corrected by suitable spectacles?
- 1[(b) Can the applicant readily distinguish the pigmentary colours red and green?
- (c) Does the applicant suffer from night blindness?].
- 2[(d)] Does the applicant suffer from a degree of deafness which would prevent his hearing the ordinary sound signals?
5. Has the applicant any deformity or loss of members which would interfere with the efficient performance of his duties as a driver?
6. Does he show any evidence of being addicted to the excessive use of alcohol, tobacco or drugs?
7. Is he, in your opinion, generally fit as regards
(a) bodily health, and (b) eyesight?
8. Marks of identification.

I certify that to the best of my knowledge and belief the applicant.....
is the person hereinabove described and that the attached photograph is a reasonably correct likeness.

(Signature).....

[Space for photograph.]

Name.....

Designation.....

NOTE.—Special attention should be directed to distant vision and to the condition of the arms and hands and the joints of both extremities.

¹ Subs. for the original question (b) by s. 4 of the Motor Vehicles (Amendment) Act 1939 (10 of 1939).

² Re-lettered, *ibid.*

FORM D.

[See section 8 (1).]

Driving Licence.

No.....

19.....

(Name).....
 son/daughter of (father's name).....
 of (permanent address) ..

 (temporary address).....

Photograph
 if necessary.

Signature or thumb impression.

is licensed to drive, throughout [the Provinces], vehicles of the following description:—*

(a) Motor cycle

(d) in Form D,—

(i) items (b) to (k), both inclusive, the following shall be substituted, namely:—

- “(b) invalid carriages,
 (c) light motor vehicles,
 (d) medium motor vehicles,
 (e) heavy motor vehicles,
 (f) road rollers,
 (g) a motor vehicle hereunder described:—”;

(k) A motor vehicle hereunder described:—

He is also authorised to drive as a paid employee* a transport vehicle.*

This licence is valid from.....to.....

(*To be struck out if inapplicable.)

Date.....19 ..

Signature and designation of Licensing
Authority.

* Subs. by the A.O. 1948 for “British India.”

(e) in Form E,—

(i) for entry 1, the following entries shall be substituted, namely:—

“1. Full name, name of father or husband, and address of person to be registered as registered owner.

1A. Age of the person to be registered as registered owner.....;

1B. Name and address of the person from whom the vehicle was purchased.....”;

~~5. Year of manufacture.....~~
6. Number of cylinders
7. Horse power.

(ii) after entry 13, the following shall be inserted, namely:—

“13A. I hereby declare that this vehicle has not been registered in any State in India.

Additional particular to be completed only in the case of transport vehicles other than motor cars.

13-B. Colour or colours of body, wings and front end.....”;

~~(b) rear axle.....~~
(c) any other axle.....
15. Maximum laden weight. lbs.
16. Maximum axle weight—
(a) front axle..... lbs.
(b) rear axle..... lbs.
(c) any other axle..... lbs.

The above particulars are to be filled in for a rigid frame motor vehicle of two or ~~three~~ ^{of 7} ~~three~~ axles, for an articulated vehicle of three axles, or, to the extent applicable, for a trailer (other than the trailer to be registered as part of an articulated vehicle) as the case may be. Where a second trailer or additional trailers are to be registered with an articulated motor vehicle the following particulars are to be furnished for each such trailer:—

17. Type of body.....
18. Unladen weight.....
19. Number, description and size of tyres on ^{each} ~~the~~ axle.....
20. Maximum axle weight in respect of ^{each axle} ~~the~~ axle (to be furnished in the motor vehicles only) 10456

Date.....19 ..

Signature of applicant.

Explanation.—An articulated vehicle means a tractor to which a trailer is attached in such a manner that part of the trailer is superimposed on and part of the weight of the trailer is borne by the tractor.

NOTE.—The motor vehicle above described is held by the person to be registered as the registered owner, under a hire purchase agreement with.....

Signature of owner.

Signature of Hire Purchase Company.

Motor Vehicles.
(The First Schedule.)

[1939 : Act IV.]

FORM F.

[See section 36 (1).]

Document to be furnished by the maker or authorised assembler in the case of transport vehicles other than motor cabs.

Certified that the vehicle Chassis No. and Engine No. is designed for maximum weights as follows when fitted with the tyre-equipment specified below:—

Maximum laden weight..... lbs.

Maximum weight front axle..... lbs.

Maximum weight rear axle..... lbs.

Maximum weight any other axle. lbs.

Tyres—

Front wheels

Rear wheels,

Other wheels.....

.....

.....

Date.....19 ..

*Signature of maker or
authorised assembler.*

Special certificate to be furnished by an assembler.

Certified that I am authorised by the maker of the vehicle described above to issue this certificate.

Signature of authorised assembler

FORM G.

[See section 24 (2).]

Form of Certificate of Registration.

Registered number

Brief description of vehicle,

(e.g., Ford touring car, Chevrolet 22 seater bus, Albion lorry, trailer, etc.) Name, name of father, and address of Registered Owner.

Signature of registering authority.

Transferred to

Signature of registering authority.

Transferred to

Signature of registering authority.

Detailed description.

1. Class of vehicle
2. Maker's name.
3. Type of body
4. Year of manufacture.
5. Number of cylinders
6. Chassis number.
7. Engine number.
8. Horse power.
9. Maker's classification or, if not known, wheel-base.

(i) after the words "name of father", the words
"or husband" shall be inserted;

(ii) after entry 11, the following shall be inserted,
namely:—

"Additional particular in the case of all trans-
port vehicles other than motor cars.

11-A. Colour or colours of body, wings and
front end.";

56

(b) rear axle. lbs.

(c) any other axle. lbs.

Additional particulars of alternative or additional trailer or trailers registered
with an articulated vehicle—

15. Type of body.
16. Unladen weight. lbs. each
17. Number, description and size of tyres on the axle.
18. Registered axle weight lbs.

Date. 19 .

Signature of registering authority.

NOTE.—The motor vehicle above described is held by the person registered as the regis-
tered owner under a hire purchase agreement with.

Date. 19 .

Signature of registering authority.

Motor Vehicles.
(*The First Schedule.*)

[1939 : Act IV.]

FORM H.

[See sections 38 ~~and 39 (2)~~ 100/56]*Certificate of fitness (applicable in the case of transport vehicles only.)*

Vehicle No. is certified as complying with the provisions of Chapter V of the Motor Vehicles Act, 1939, and the rules made thereunder. This certificate will expire on.....

Date..... 19 .

Signature and designation of
Inspecting authority.

The certificate of fitness is hereby renewed—

up to.....19 .

up to.....19 .

up to..... 19 .

Signature of Inspecting Authority.

(The Second Schedule.)

THE SECOND SCHEDULE.

[See section 7 (5).]

I. DISEASES AND DISABILITIES ABSOLUTELY DISQUALIFYING A PERSON FOR OBTAINING A LICENCE TO DRIVE A MOTOR VEHICLE.

1. Epilepsy.

2. Lunacy.

3. Heart disease likely to produce sudden attacks of giddiness or fainting.

4. Inability to distinguish with each eye at a distance of twenty-five yards in good day light (with the aid of glasses, if worn) a series of seven letters and figures in white on a black ground of the same size and arrangement as those of the registration mark of a motor car.

5. A degree of deafness which prevents the applicant from hearing the ordinary sound signals.

6. ¹[Inability readily to distinguish the pigmentary colours red and green.]

7. Night-blindness.

II. DISEASES AND DISABILITIES ABSOLUTELY DISQUALIFYING A PERSON FOR OBTAINING A LICENCE TO DRIVE A PUBLIC SERVICE VEHICLE.

1. Leprosy.

¹ Subs. by s. 5 of the Motor Vehicles (Amendment) Act, 1939 (40 of 1939).

(The Third Schedule.)

THE THIRD SCHEDULE.

[See sections 7 (6) (a) and 17 (6).]

TEST OF COMPETENCE TO DRIVE.

Part I.

The candidate shall satisfy the person conducting the test that he is able to—

1. Start the engine of the vehicle.
2. Move away straight ahead or at an angle.
3. Overtake, meet or cover the path of other vehicles and take an appropriate course.
4. Turn right and left corners correctly.
5. Stop the vehicle in an emergency and normally, and in the latter case bring it to rest at an appropriate part of the road.
6. Drive the vehicle backwards and whilst so doing enter a limited opening either to the right or left.
7. Cause the vehicle to face in the opposite direction by means of forward and reverse gears.
8. Give by hand and by mechanical means (if fitted to the vehicle), or, in the case of a disabled driver for whom it is impracticable or undesirable to give signals by hand, by mechanical means in a clear and unmistakable manner, appropriate signals at appropriate times to indicate his intended actions.
9. Act correctly and promptly on all signals given by traffic signs and traffic controllers, and take appropriate action on signs given by other road users.

NOTE.—(i) Requirements 6 and 7 are not applicable in the case of a motor cycle or tricycle not equipped with means for reversing.

(ii) Requirements 6, 7 and 8 are not applicable in the case of invalid carriages.

Part II.

The candidate shall satisfy the person conducting the test that he is cognizant of the provisions of sections 81, 82, 83, 84 and 85 and of the Tenth Schedule; that he knows the meaning of the traffic signs specified in the Ninth Schedule; and, if he has not been medically examined, that he is not so deaf as to be unable to hear the ordinary sound signals, and is able to distinguish with each eye at a distance of twenty-five yards in good day light (with the aid of glasses, if worn) a registration mark containing seven letters and figures.

(The Fourth Schedule.)

THE FOURTH SCHEDULE.

[See sections 14 (1) and 39 (1) and (3).]

AUTHORITIES ENTITLED TO GRANT LICENCES TO DRIVE, AND TO REGISTER-MOTOR VEHICLES, THE PROPERTY ¹[OR FOR THE TIME BEING UNDER THE EXCLUSIVE CONTROL] OF THE CENTRAL GOVERNMENT, AND REGISTRATION MARKS FOR SUCH VEHICLES.

Part A.

The authorities specified in the second column may grant licences in respect of vehicles, the property ¹[or for the time being under the exclusive control] of the Department of the Central Government specified in the first column.

Defence Department of the Central Govern-
ment.

1. District Commanders.
2. Commanders of independent brigades.
3. Officers commanding units having me-
chanically propelled vehicles in their
charge
4. Commanders, Royal Engineers.

Part B.

The authorities specified in the second column may register motor vehicles, the property ¹[or for the time being under the exclusive control] of the Department of the Central Government specified in the first column, and may grant certificates of fitness in respect of such vehicles.

Defence Department of the Central Govern-
ment.

The Master General of the Ordnance in
India ¹[or any person authorised by
him in this behalf.]

Part C.

Registration marks for vehicles registered under section 39.

²[A broad arrow followed by not more than six figures, or a broad arrow followed by a single letter and not more than ~~five figures~~.] Six

¹ Ins. by s. 23 of the Motor Vehicles (Amendment) Act, 1942 (20 of 1942)

² Subs. for the original words *ibid*.

(The Fifth Schedule.)

THE FIFTH SCHEDULE.

[See sections 19 (2) and (3) and 130.]

OFFENCES ON CONVICTION OF WHICH AN ENDORSEMENT SHALL BE MADE
ON THE LICENCE OF THE PERSON AFFECTED.

Part A.

1. Driving recklessly or dangerously (section 116).
2. Driving while under the influence of drink or drugs (section 117).
3. Abetment of an offence under section 116 or 117 (section 119).
4. Taking part in unauthorised race or trial of speed (section 120).
5. Driving when disqualified (section 18).
6. Obtaining or applying for a licence without giving particulars of endorsement (section 114).
7. Failing to stop on the occurrence of an accident (section 87).
8. Altering a licence or using an altered licence.
9. Any offence punishable with imprisonment in the commission of which a motor vehicle was used.

Part B.

1. Driving without a licence, or without a licence which is effective, or without a licence applicable to the vehicle driven (section 3).
2. Allowing a licence to be used by another person [section 6 (2)].
3. Driving at excessive speed (section 115).
4. Driving when mentally or physically unfit to drive (section 118).
5. Abetment of an offence punishable under section 115 or 118.
6. Refusing or failing within specified time to produce licence (section 86).
7. Failing to stop when required (section 87).
8. Driving an unregistered vehicle (section 22).
9. Driving a transport vehicle not covered by a certificate of fitness (section 38).
10. Driving in contravention of any rule made under section 70 (2) (g) relating to speed governors.
11. Driving a vehicle exceeding the permissible limit of weight (section 124).
12. Failure to comply with a requisition made under section 73
13. Using a vehicle in unsafe condition (section 121).
14. Driving a transport vehicle in contravention of section 42.

100. For the Sixth Schedule to the principal Act, the following Schedule shall be substituted, namely:—

Substitution
of new
Schedule for
Sixth
Schedule.

“THE SIXTH SCHEDULE

[See section 24 (3) and 29 (2).]

REGISTRATION MARKS

One of the groups of letters specified in the second column followed by any one other letter shall be used as the registration mark for a vehicle in the State specified in the first column.

Andhra Pradesh.	AP, AD
Assam.	AS
Bihar.	BR
Bombay.	BM, BY
Kerala.	KL
Madhya Pradesh.	MP, CP
Madras.	MD, MS
Mysore.	MY
Orissa.	OR
Punjab.	PN, PU
Rajasthan.	RJ
Uttar Pradesh.	UP, US
West Bengal.	WB, WG
Delhi.	DL
Himachal Pradesh.	HI
Manipur.	MN
Tripura.	TR
Andaman and Nicobar Islands.	AN
Laccadive, Minicoy and Amindivi Islands.	LC, MA

NOTE.—These letters shall be followed by not more than four figures, and the letters and figures shall be shown—

1. In the case of trans-
port vehicles .. In black on a white ground.

³ The entry “North-West Frontier Province.... FP” rep. by the A.O. 1946.

⁴ The entry “Sind.....KA” rep. by the A.O. 1948.

⁵ The entry “Punjab..... PB., PJ” rep. by the A.O. 1948.

⁶ Ins. by s. 6 of the Motor Vehicles (Amendment) Act, 1939 (40 of 1939).

(The Seventh Schedule.)

Table B.

For each high pressure pneumatic tyre,
fitted to a wheel on the axle, of a
nominal size—

The permissible
weight in
pounds is—

30 × 5	.	.	.	.	.	.	.	.	.	2,000
33 × 5	.	.	.	.	.	.	.	.	.	2,000
34 × 5	.	.	.	.	.	.	.	.	.	2,000
35 × 5	.	.	.	.	.	.	.	.	.	2,000
32 × 6	.	.	.	.	.	.	.	.	.	2,650
34 × 6	.	.	.	.	.	.	.	.	.	2,650
36 × 6	.	.	.	.	.	.	.	.	.	2,650
32 × 6½	.	.	.	.	.	.	.	.	.	2,950
32 × 7	.	.	.	.	.	.	.	.	.	3,000
34 × 7	.	.	.	.	.	.	.	.	.	3,300
36 × 7	.	.	.	.	.	.	.	.	.	3,300
38 × 7	.	.	.	.	.	.	.	.	.	3,300
36 × 8	.	.	.	.	.	.	.	.	.	4,000
38 × 8	.	.	.	.	.	.	.	.	.	4,200
40 × 8	.	.	.	.	.	.	.	.	.	4,400
38 × 9	.	.	.	.	.	.	.	.	.	4,850
40 × 9	.	.	.	.	.	.	.	.	.	5,100
42 × 9	.	.	.	.	.	.	.	.	.	5,300
40 × 10	.	.	.	.	.	.	.	.	.	5,700
44 × 10	.	.	.	.	.	.	.	.	.	6,150

Explanation.—The figures “5.00-17”, etc., in Table A represent, respectively, the nominal sectional diameter of the tyre and the diameter of the wheel rim; and the figures “30×5”, etc., in Table B represent, respectively, the over-all diameter of wheel and tyre and the nominal sectional diameter of the tyre, all figures being in inches. The actual sectional diameter of the tyre when mounted on its appropriate rim and inflated shall in no case be less than the nominal sectional diameter.

Note.—Tyres may be calibrated in so called metric sizes, for example, “170×20”. In that case the first number represents the sectional diameter of the tyre in millimetres and the second number represents the diameter of the rim in inches. The permissible weight in pounds for each such tyre shall be determined by dividing the nominal sectional diameter of the tyre in millimetres by the figure 25.4, the quotient being the nominal sectional diameter in inches. The permissible weight given in Table A for the nearest equivalent nominal sectional diameter in inches and the actual rim-diameter shall be the permissible weight for that tyre.

102. For the Eighth Schedule to the principal Act, the following Schedule shall be substituted, namely:—

“THE EIGHTH SCHEDULE

[See section 71]

LIMITS OF SPEED FOR MOTOR VEHICLES

<i>Class of vehicle</i>	<i>Maximum speed per hour Miles</i>
(1) If all the wheels of the vehicle are with pneumatic tyres and the vehicle is not drawing a trailer:—	
(a) if the vehicle is a light motor vehicle or a motor cycle	No limit
(b) if the vehicle is a medium motor vehicle	35
(c) if the vehicle is a heavy motor vehicle and a public service vehicle	30
(d) if the vehicle is a heavy motor vehicle but not a public service vehicle	25
(2) If the vehicle is drawing not more than one trailer (or in the case of artillery equipment, not more than two trailers) and all the wheels of the drawing vehicle and the trailer are fitted with pneumatic tyres:—	
(a) if the vehicle is a light motor vehicle and the trailer being two-wheeled has a laden weight not exceeding 1,700 pounds avoirdupois	35
(b) if the vehicle is a light motor vehicle and the trailer has more than two wheels or a laden weight exceeding 1,700 pounds avoirdupois	30
(c) if the vehicle is a medium motor vehicle	25
(d) if the vehicle is a heavy motor vehicle	20
(3) Any case not covered by entry (1) or entry (2)	15.”

(The Ninth Schedule.)

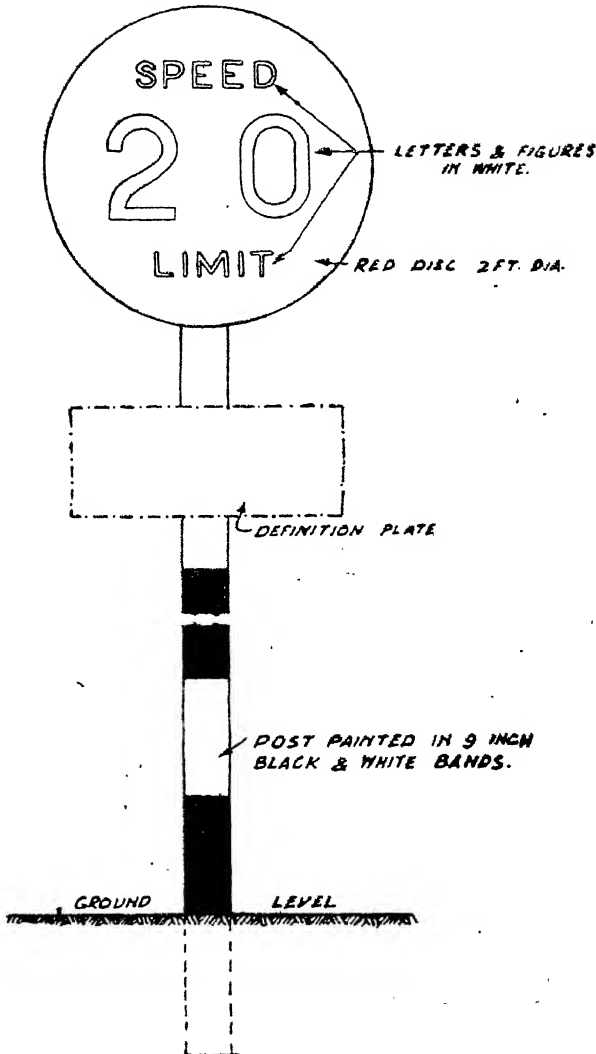
THE NINTH SCHEDULE.

(See sections 75, 77 and 78.)

TRAFFIC SIGNS.

Part A.—Mandatory Signs

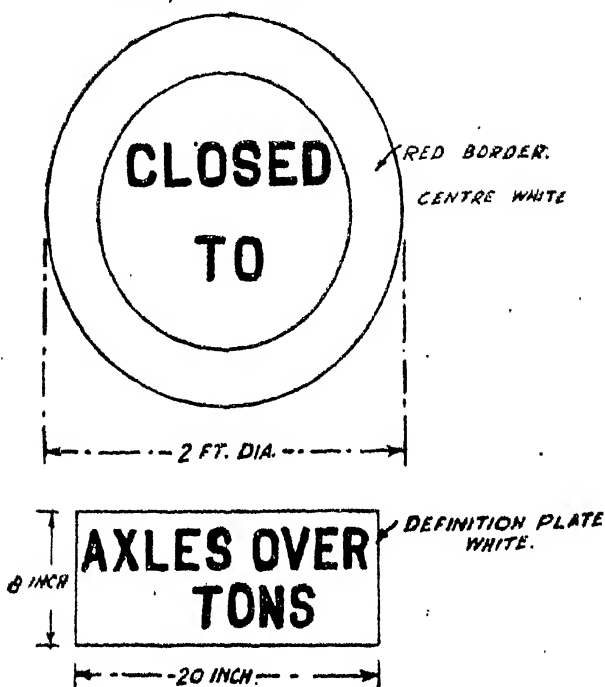
NO. 1

SPEED LIMIT

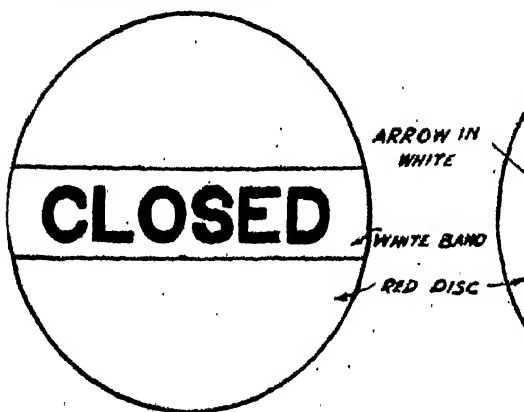
NOTES :—

- (1) The figure 20 is given merely as an example. The actual figures will be as prescribed in each case where this sign is used.
- (2) The general design of the post is given for guidance.
- (3) Where the speed limit is, or is to be, imposed only on a certain class or classes of motor vehicle the class or classes will be specified on the "definition plate". Where in addition to a general speed limit applicable to other motor vehicles a special speed limit is, or is to be imposed on vehicles of a certain class or classes, the general speed limit will be specified on the disc and the special speed limit together with the class or classes of vehicle to which it applies will be specified on the "definition plate."

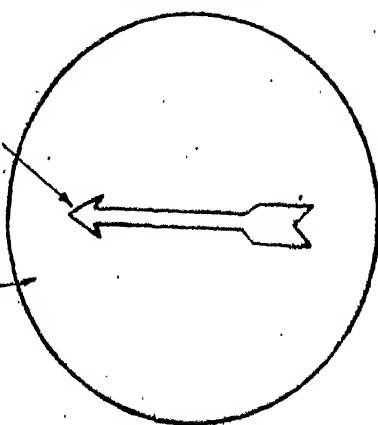
NO. 2
WEIGHT LIMIT

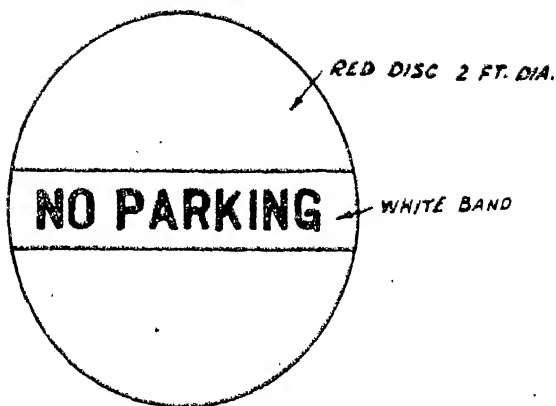


NO. 3
TOTAL PROHIBITION

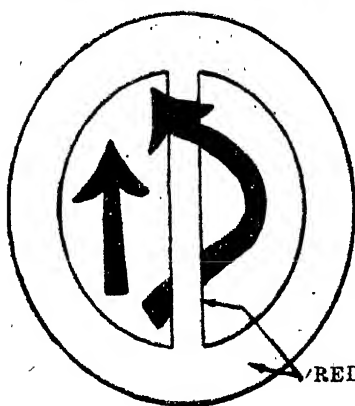
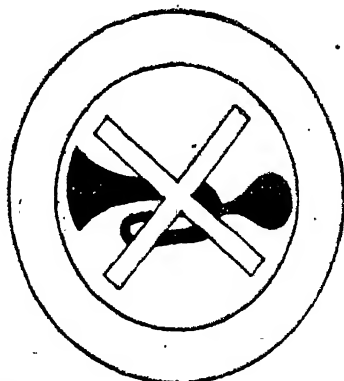


NO. 4
DIRECTION SIGN



NO. 5
NO PARKING

Note.—Sign No. 5 as here set forth may be amplified by instructions inscribed upon a definition plate placed below it as in the general arrangement set forth in sign No. 1 of this Part. Upon the definition plate may be set forth the times during which parking is prohibited. In like manner an arrow-head inscribed on the definition plate will indicate that parking is prohibited on that part of the street or road lying to the side of the sign to which the arrow-head points.

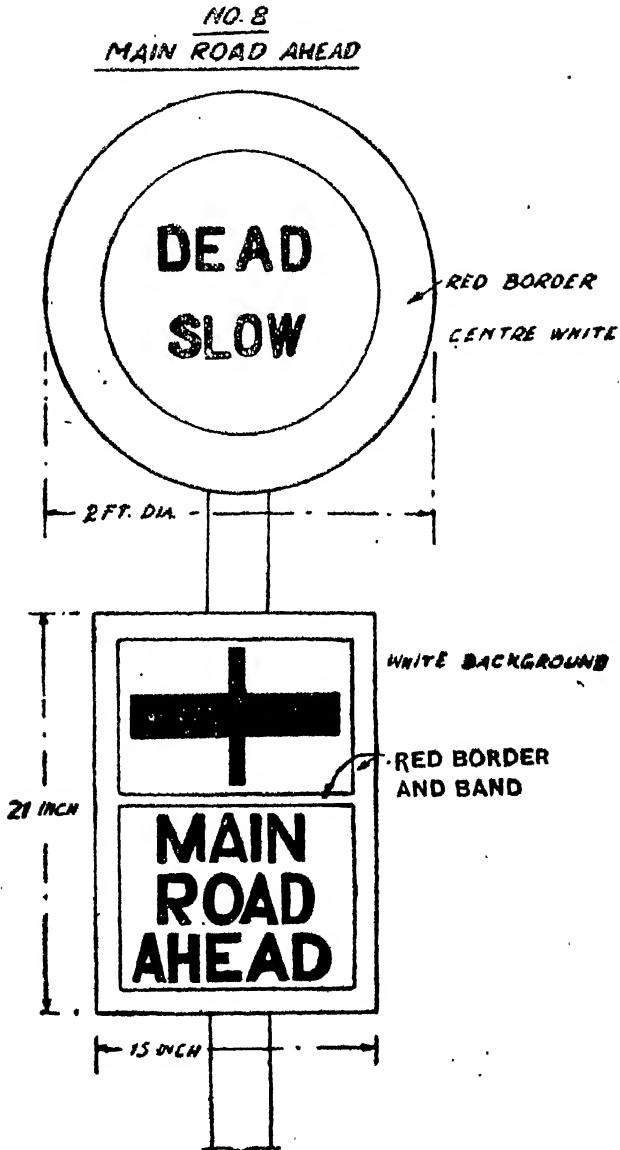
NO. 6
OVERTAKING PROHIBITED¹ [NO. 7]
USE OF SOUND SIGNALS PROHIBITED.

Cross and border—Red
Background—White
Device—Black.]

¹ Subs. by s. 7 of the Motor Vehicles (Amendment) Act, 1939 (40 of 1939).

Motor Vehicles
(The Ninth Schedule.)

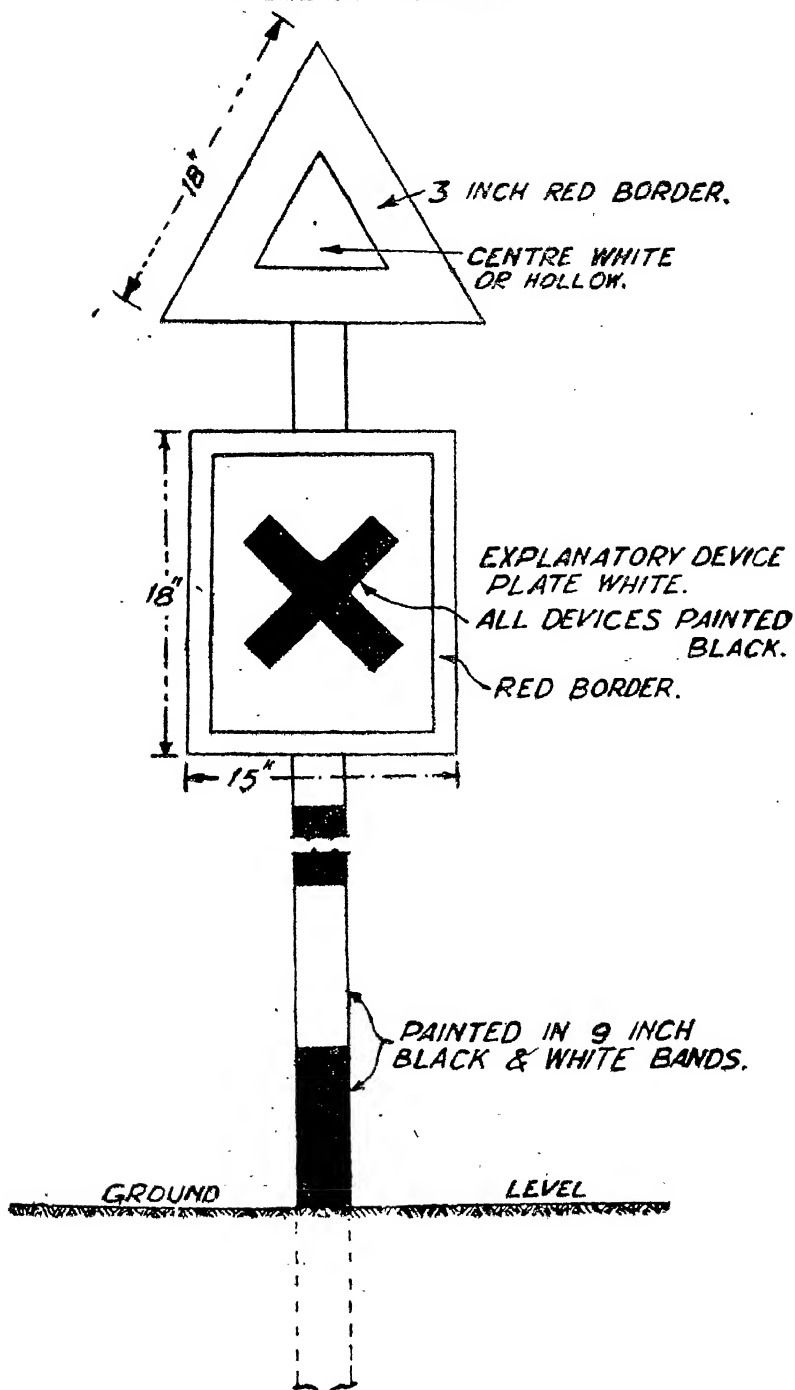
[1939 : Act IV.]



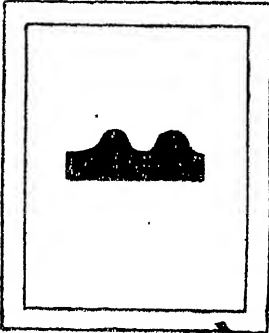
(The Ninth Schedule.)

Part B.—Cautionary Signs.

GENERAL DESIGN.



NO. 1
ROUGH ROAD

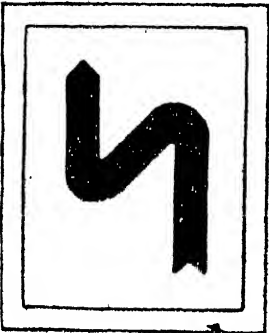


NO. 2
ZIG-ZAG (RIGHT)

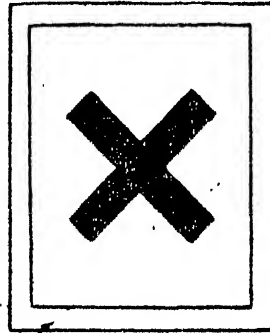


RED BORDER

NO. 2
ZIG-ZAG (LEFT)

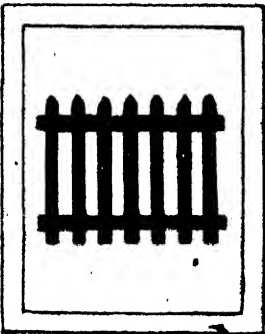


NO. 3
CROSS ROADS

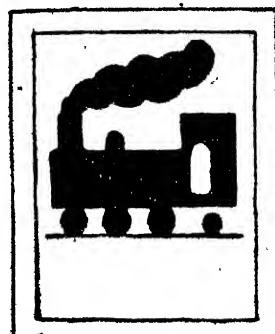


RED BORDER

NO. 4
LEVEL CROSSING
(GUARDED)

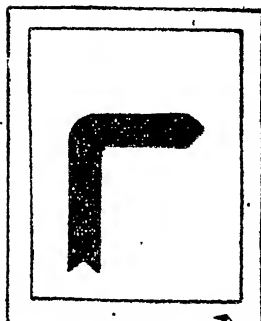


NO. 5
LEVEL CROSSING
(UNGUARDED)



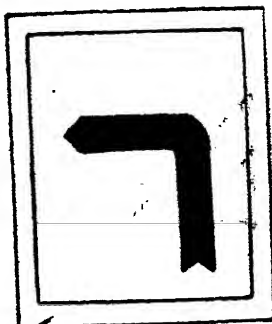
RED BORDER

NO. 6
RIGHT TURN



RED BORDER

NO. 6
LEFT TURN

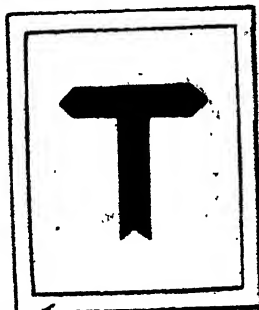


NO. 7
SCHOOL

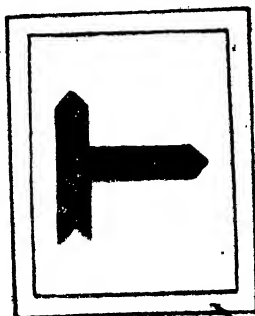


RED BORDER

NO. 8
DEAD END CROSS ROAD

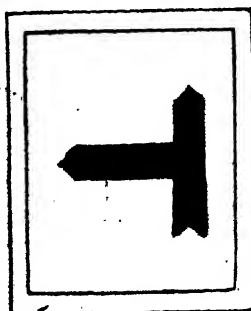


NO. 9
SIDE ROAD (RIGHT)

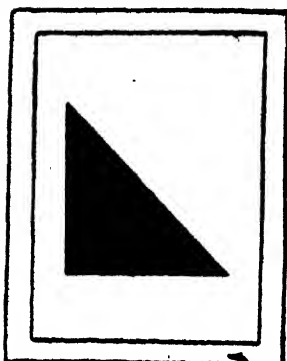
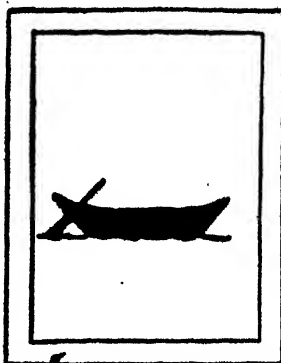


RED BORDER

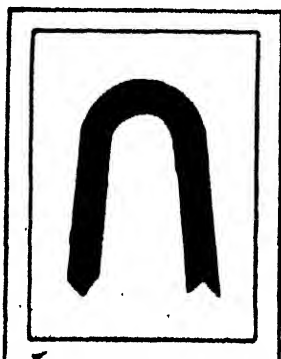
NO. 9
SIDE ROAD (LEFT)



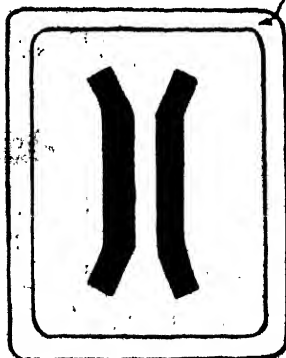
(The Ninth Schedule.)

NO. 10
STEEP HILLNO. 11
FERRY

RED BORDER

NO. 12
HAIR PIN BEND (RIGHT)NO. 12
HAIR PIN BEND (LEFT)

RED BORDER

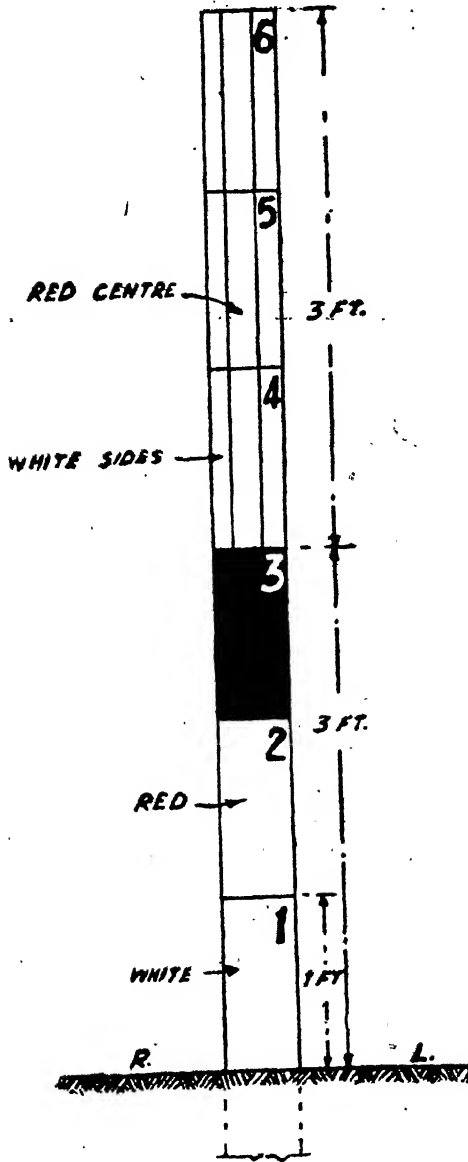
NO. 13
NARROW BRIDGE

RED BORDER

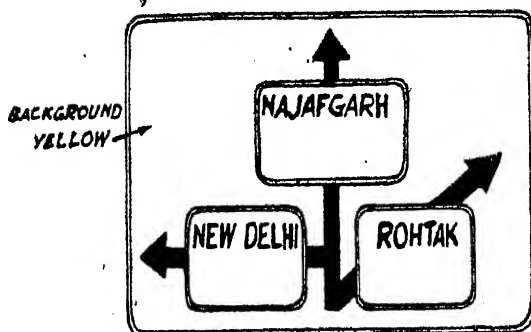
(The Ninth Schedule.)

Part C.—Informatory Signs.

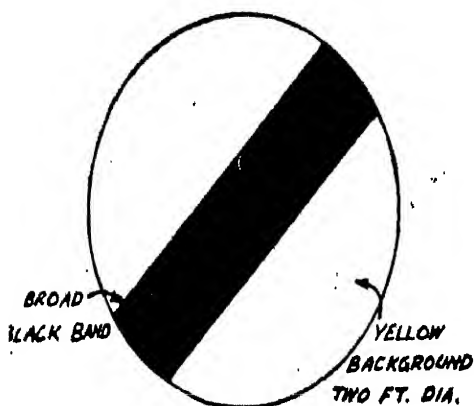
NO. 1
FLOOD GAUGE
SIDE ELEVATION.



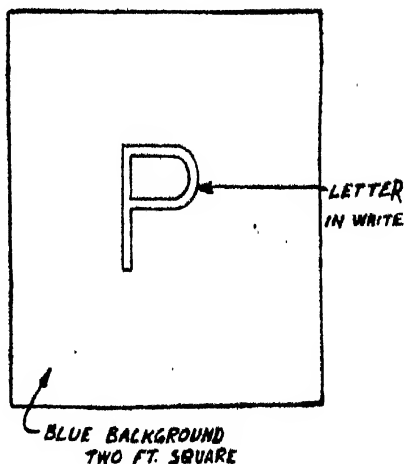
NO. 2
ROAD JUNCTION APPROACH.



NO. 3
END OF SPEED LIMIT.



NO. 4
PARKING SIGN.



(The Tenth Schedule.)

THE TENTH SCHEDULE.

(See sections 77 and 78.)

DRIVING REGULATIONS.

1. The driver of a motor vehicle shall drive the vehicle as close to the left hand side of the road as may be expedient, and shall allow all traffic which is proceeding in the opposite direction to pass him on his right hand side.

2. Except as provided in regulation 3, the driver of a motor vehicle shall pass to the right of all traffic proceeding in the same direction as himself.

3. The driver of a motor vehicle may pass to the left of a vehicle the driver of which having indicated an intention to turn to the right has drawn to the centre of the road and may pass a tram-car or other vehicle running on fixed rails, whether travelling in the same direction as himself or otherwise, on either side:

Provided that in no case shall he pass a tram-car at a time or in a manner likely to cause danger or inconvenience to other users of the road or pass on the left hand side a tram-car, which, when in motion would be travelling in the same direction as himself, while the tram-car is at rest for the purpose of setting down or taking up passengers.

4. The driver of a motor vehicle shall not pass a vehicle travelling in the same direction as himself—

(a) if his passing is likely to cause inconvenience or danger to other traffic proceeding in any direction, or

(b) where a point or corner or a hill or an obstruction of any kind renders the road ahead not clearly visible.

5. The driver of a motor vehicle shall not, when being overtaken or being passed by another vehicle, increase speed or do anything in any way to prevent the other vehicle from passing him.

6. The driver of a motor vehicle shall slow down when approaching a road intersection, a road junction or a road corner, and shall not enter any such intersection or junction until he has become aware that he may do so without endangering the safety of persons thereon.

7. The driver of a motor vehicle shall, on entering a road intersection, if the road entered is a main road designated as such, give way to the vehicles proceeding along that road, and in any other case give way to all traffic approaching the intersection on his right hand.

8. The driver of a motor vehicle shall, when passing or meeting a procession or a body of troops or police on the march or when passing workmen engaged on road repair, drive at a speed not greater than fifteen miles an hour.

9. The driver of a motor vehicle shall—

- (a) when turning to the left, drive as close as may be to the left hand side of the road from which he is making the turn and of the road which he is entering;
- (b) when turning to the right, draw as near as may be to the centre of the road along which he is travelling and cause the vehicle to move in such a manner that—
 - (i) as far as may be practicable it passes beyond, and so as to leave on the driver's right hand, a point formed by the intersection of the centre lines of the intersecting roads; and
 - (ii) it arrives as near as may be at the left hand side of the road which the driver is entering.

THE ELEVENTH SCHEDULE.

(See section 79.)

SIGNALS.

1. When about to turn to the right or to drive to the right hand side of the road in order to pass another vehicle or for any other purpose, a driver shall extend his right arm in a horizontal position outside of and to the right of his vehicle with the palm of the hand turned to the front.

2. When about to turn to the left or to drive to the left hand side of the road, a driver shall extend his right arm and rotate it in an anticlockwise direction.

3. When about to slow down, a driver shall extend his right arm with the palm downward and to the right of the vehicle and shall move the arm so extended up and down several times in such a manner that the signal can be seen by the driver of any vehicle which may be behind him.

4. When about to stop, a driver shall raise his right forearm vertically outside of and to the right of the vehicle, palm to the front.

5. When a driver wishes to indicate to the driver of a vehicle behind him that he desires that driver to overtake him, he shall extend his right arm and hand horizontally outside of and to the right of the vehicle and shall swing the arm backwards and forwards in a semi-circular motion.

THE INDIAN NAVAL RESERVE FORCES (DISCIPLINE) ACT, 1939¹.

[29th March. 1939]

An Act to provide for the discipline of members of the Indian Naval Reserve Forces raised in ²[the ~~Provinces~~ ^{Government}] on behalf of His Majesty.

WHEREAS it is expedient to provide for the discipline of members of the Indian Naval Reserve Forces raised in ²[the ~~Provinces~~ ^{Government}] on behalf of His Majesty, and in furtherance of that purpose to amend the First Schedule to the Indian Navy (Discipline) Act, 1934;

XXXIV of 1934,

It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may^{*} be called the Indian Naval Reserve Forces (Discipline) Act, 1939.

(2) It extends to ⁴[all the ~~Provinces~~ ^{Whole} of India], and applies to members of the Indian Naval Reserve Forces wherever they may be.

(3) It shall come into force on such ⁴date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

The Indian Naval Reserve Forces.

2. The Indian Naval Reserve Forces shall consist of the ~~Royal~~ Indian Fleet Reserve, the ~~Royal~~ Indian Naval Reserve, the ~~Royal~~ Indian Naval Volunteer Reserve and the Royal Indian Naval Communications Reserve.

Power to make rules for regulation of Naval Reserve Forces.

3. The Central Government may make rules for the government, discipline and regulation of the Indian Naval Reserve Forces.

Liability to Naval Discipline Act.

4. Every member of the Indian Naval Reserve Forces, while undergoing training on board any vessel or otherwise, in pursuance of rules made under section 3, or when called into actual service in the Royal Indian Navy, on board any vessel or otherwise, in pursuance of the said rules, shall be subject to the ~~Naval Discipline Act as set out in the First Schedule to the Indian Navy (Discipline) Act, 1934,~~ in the same manner as a person in or belonging to the Indian Navy and shall continue to be so subject until duly released from such training or service, as the case may be.

XXXIV of 1934,

¹ This Act was made by the Governor General under s. 67-B of the Government of India Act as set out in the Ninth Schedule to the Government of India Act, 1935. No number was given to this Act.

For the Statement of Objects and Reasons, see Gazette of India, 1939, Pt. V, p. 16.

² Subs. by the A.O. 1948 for "British India".

³ Subs. by the A.O. 1948 for "the whole of British India".

⁴ The 3rd June 1939, see notification No. 693, dated 3rd June, 1939, Gazette of India, 1939, Pt. I, p. 959.

Penalty for failure to attend when required or called.

5. (1) If any member of the Indian Naval Reserve Forces, when required, in pursuance of rules made under section 3, to attend on board any vessel or at any place for the purpose of undergoing training, fails without reasonable excuse to attend in accordance with such requirement, he shall be punishable with fine which may extend to two hundred rupees.

(2) If any member of the Indian Naval Reserve Forces, when called into actual service in the Royal Indian Navy and required by such call to join any vessel or attend at any place, fails without reasonable excuse to comply with such requirement at or within such time as the Central Government may, by order, direct, he shall be liable to be apprehended and punished in the same manner as a person in or belonging to the Indian Navy deserting or improperly absenting himself from duty, except that the punishment shall not exceed imprisonment which may extend to two years.

Rule of evidence.

6. Where any member of the Indian Naval Reserve Forces is required, in pursuance of rules made under section 3, to attend on board any vessel or at any place for the purpose of undergoing training, and is called into actual service in the Royal Indian Navy, a certificate

8. (1) Officers, other than warrant officers and subordinate officers, in the Indian Naval Reserve Forces shall be appointed by commission of the President.

(2) The grant of the commission shall be notified in the Gazette of India and such notification shall be conclusive proof of the grant of such commission.

(3) Warrant officers and subordinate officers shall be appointed in such manner and shall hold such rank Central Government.

(4) All officers in the Indian Naval Reserve Forces at the commencement of the Constitution shall be deemed to have been duly appointed under the provisions of this section, and where such officers hold or deemed to hold commissions or warrants granted before the commencement of the Constitution, they shall be deemed to have been relinquished such commissions or warrants.

9. The terms and conditions of service and the manner and procedure of enrolment of persons other than officers shall be as prescribed by rules of the Central Government, and such persons in the Indian Naval Reserve Forces at the commencement of the Constitution shall be deemed to have been enrolled under the provisions of this section.

Jurisdiction

WHEREAS it is expedient to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie; It is hereby enacted as follows:—

Short title and extent. 1. (1) This Act may be called the Dissolution of Muslim Marriages Act 1939

(2) It extends to the whole of India except the territories which immediately before the 1st November 1956, were comprised in Part B States.

Grounds for decree for dissolution of marriage.

2. A decree for the dissolution of a marriage may be granted on any one or more of the following grounds, namely:—

- (i) that the whereabouts of the husband have not been known for a period of four years;
- (ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;
- (iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;
- (iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;
- (v) that the husband was impotent at the time of the marriage and continues to be so;
- (vi) that the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease;
- (vii) that she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years:

Provided that the marriage has not been consummated;

- (viii) that the husband treats her with cruelty, that is to say,—
 - (a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or
 - (b) associates with women of evil repute or leads an infamous life, or
 - (c) attempts to force her to lead an immoral life, or
 - (d) disposes of her property or prevents her exercising her legal rights over it, or
 - (e) obstructs her in the observance of her religious profession or practice, or

¹ Subs. by the A.O. 1948 for "the whole of British India".

- (f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran;
- (ix) on any other ground which is recognised as valid for the dissolution of marriages under Muslim law:

Provided that—

- (a) no decree shall be passed on ground (iii) until the sentence has become final;
- (b) a decree passed on ground (i) shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorised agent within that period and satisfies the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree; and
- (c) before passing a decree on ground (v) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground.

Notice to be served on heirs of the husband when the husband's whereabouts are not known.

3. In a suit to which clause (i) of section 2 applies—

- (a) the names and addresses of the persons who would have been the heirs of the husband under Muslim law if he had died on the date of the filing of the plaint shall be stated in the plaint,
- (b) notice of the suit shall be served on such persons, and
- (c) such persons shall have the right to be heard in the suit:

Provided that paternal uncle and brother of the husband, if any, shall be cited as party even if he or they are not heirs.

Effect of conversion to another faith.

4. The renunciation of Islam by a married Muslim woman or her conversion to a faith other than Islam shall not by itself operate to dissolve her marriage:

Provided that after such renunciation, or conversion, the woman shall be entitled to obtain a decree for the dissolution of her marriage on any of the grounds mentioned in section 2:

Provided further that the provisions of this section shall not apply to a woman converted to Islam from some other faith who re-embraces her former faith.

Rights to dower not to be affected.

5. Nothing contained in this Act shall affect any right which a married woman may have under Muslim law to her dower or any part thereof on the dissolution of her marriage.

6. [Repeal of section 5 of Act 26 of 1937].—Rep. by s. 2 and Sch. I of the Repealing and Amending Act, 1942 (25 of 1942).

THE STANDARDS OF WEIGHT ACT, 1939.

Act No. IX of 1939.¹

[28th March, 1939.]

An Act to establish standards of weight throughout
²[the Provinces].

WHEREAS it is expedient to establish standards of weight
 throughout ²[the Provinces].

It is hereby enacted as follows:—

1. (1) This Act may be called the Standards of Weight Act, 1939. Short title,
extent and
commence-
ment.
- (2) It extends to ³[all the Provinces of India].
- (3) It shall come into force on such ⁴date as the Central Govern-
ment may, by notification in the official Gazette, appoint.
2. (1) The unit for weight shall be the standard grain, that is to Unit for
weight.
 say, that weight which when multiplied by 1799.84585 is the weight
in vacuo, of the iridio-platinum cylinder in the custody of the Mint
 Master, Bombay, certified by the Standards Department of the British
 Board of Trade as having a weight of 1799.84585 grains *in vacuo*.
- (2) The standard grain shall be the only unit from which all other
 standard weights shall be ascertained.
3. (1) There shall be the following standard weights, namely:— Standard
weights.
 - (a) the standard tola, being a weight of 180 standard grains;
 - (b) the standard seer, being a weight of 80 standard tolas or
 14,400 standard grains;
 - (c) the standard maund, being a weight of 40 standard seers;
 - (d) the standard pound, being a weight of 7,000 standard grains;
 - (e) the standard ounce, being one-sixteenth part of the weight
 of a standard pound;
 - (f) the standard hundredweight, being a weight of 112 standard
 pounds;
 - (g) the standard ton, being a weight of 2,240 standard pounds.
- (2) No weight other than the weights set forth in sub-section (1)
 and integral multiples or sub-multiples of any such weight shall be
 used as a standard weight.

¹ For the Statement of Objects and Reasons, see Gazette of India, 1939, Pt. V, p. 18.

² Subs. by the A.O. 1948 for "British India".

³ Subs. by the A.O. 1948 for "the whole of British India".

⁴ The 1st July 1942, see notification No. 33-C(6)/37-A, dated 13th June 1942, Gazette of India, 1942, Pt. I, p. 1012.

Sets of
standard
weights.

4. (1) The Central Government shall cause to be prepared one set of such of the standard weights specified in sub-section (1) of section 3 or multiples or sub-multiples thereof as the Central Government may consider expedient, and shall cause each weight of such set to be authenticated as having been ascertained from the standard grain, and shall deposit the set in such custody as the Central Government may think fit.

(2) The Central Government shall cause similar sets of weights, similarly authenticated, to be prepared, and shall supply one set to each Provincial Government.

(3) The Central Government shall cause similar sets of weights, similarly authenticated, to be prepared and shall supply one set to the Government of any Indian State or foreign settlement situated in India which applies for it and pays the price fixed by the Central Government.

Rules.

5. (1) The Central Government may, by notification in the official Gazette, make rules for carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, rules made under this section may regulate—

(a) the preparation of the sets of standard weights referred to in section 4;

(b) the custody of the set of such weights which is to be maintained by the Central Government and the periodical verification and adjustment thereof;

(c) the periodical verification and adjustment of the sets of standard weights supplied to Provincial and other Governments.

Repeal.

6. The Indian Weights and Measures of Capacity Act, 1871, in XXXI of so far as it relates to the establishment of standards of weight, is hereby repealed.

THE INDIAN FINANCE ACT, 1939¹.

[30th March, 1939].

An Act^{2*} * * to fix rates of income-tax and super-tax.

¹ This Act was made by the Governor General under s. 67-B of the Government of India Act as set out in the Ninth Schedule to the Government of India Act, 1935. No number was given to this Act.

For the Statement of Objects and Reasons, see Gazette of India, 1939, Pt. V, p. 100.

This Act has been applied to—

the Darjeeling district see Notification No. 5650-F.B., dated 3rd July, 1939, Calcutta Gazette, dated 6th July, 1939.

all the partially-excluded areas of the Province of Orissa by the Orissa Finance Second Validating Regulation, 1941 (Orissa Regulation 5 of 1941).

all the partially-excluded areas of the C.P. and Berar with effect from 30th March 1939, see the Central Provinces and Berar Indian Finance and the Excess Profits Tax Validating Regulation, 1944 (C. P. and Berar Regulation I of 1944).

² Certain words rep. by s. 2 and Sch. I of the Repealing and Amending Act, 1942 (25 of 1942).

It is hereby enacted as follows:—

(2) It extends to the whole of India except the territories which immediately before the 1st November 1956, were comprised in Part B States.

- | | |
|--------------------------------------|---|
| 3. [Excise duty on Khandsari sugar.] | Rep. by s. 2 and Sch. I of the Repealing and Amending Act, 1942 (25 of 1942). |
| 4 [Import duty on raw cotton.] | |
| 5. [Inland postage rates.] | |

6. (1) Subject to the provisions of sub-section (2)—

(a) income-tax for the year beginning on the 1st day of April, 1939, shall be charged at the rates specified in Part I of Schedule II, and

(b) rates of super-tax for the year beginning on the 1st day of April, 1939, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be those specified in Part II of Schedule II.

XI of 1922.

XI of 1922.

(2) In cases to which section 17 of the Indian Income-tax Act, 1922, applies, the tax chargeable shall be determined in accordance with the provisions of that section with reference to the rates specified in Schedule II.

(3) For the purpose of this section and of Schedule II, the expression "total income" means total income as determined for the purposes of income-tax or super-tax as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922.

XI of 1922.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2), where more than half of the total income of any individual or Hindu undivided family consists of income from salaries, interest on securities or dividends in respect of which the individual or Hindu undivided family is deemed, under the provisions of section 49B of the Indian Income-tax Act, 1922, to have paid income-tax imposed in [the Provinces] or consists of income falling under more than one of those heads—

XI of 1922.

(a) income-tax for the year beginning on the 1st day of April, 1939, shall be charged in respect of such total incomes at the rates of income-tax which were imposed for the year beginning on the 1st day of April, 1938, in respect of incomes of individuals or Hindu undivided families, and

¹ Certain words rep. by s. 2 and Sch. I of the Repealing and Amending Act, 1942 (25 of 1942).

2 Subs. by the A.O. 1948 for "the whole of British India".

³ Subs. by the A.O. 1948 for "British India".

(b) in cases in which super-tax has been deducted under the provisions of section 18 of the said Act or would have been so deductible had the Indian Income-tax (Amendment) Act, 1939, come into force on the 1st day of April, VII of 1939, 1938, the rates of super-tax for the year beginning on the 1st day of April, 1939, shall, for the purposes of section XI of 1922. 55 of the Indian Income-tax Act, 1922, be the rates of super-tax which were imposed for the year beginning on the 1st day of April, 1938, in respect of incomes of individuals or Hindu undivided families, as the case may be.

(5) In respect of income to which sub-section (4) applies, the provisions of section 17 of the Indian Income-tax Act, 1922, shall apply XI of 1922. to the assessment to be made for the year beginning on the 1st day of April, 1939, as though the Indian Income-tax (Amendment) Act, 1939, VII of 1939, had not been passed.

SCHEDULE I.

Rep. by s. 2 and Sch. I of the Repealing and Amending Act, 1942 (25 of 1942).

SCHEDULE II.

[See section 6.¹

PART I.

RATES OF INCOME-TAX

A. In the case of every individual, Hindu undivided family, un-registered firm and other association of persons not being a case to which paragraph B of this Part applies—

	Rate
1. On the first Rs. 1,500 of total income . . .	Nil.
2. On the next Rs. 3,500 of total income . . .	Nine pies in the rupee.
3. On the next Rs. 5,000 of total income . . .	One anna and three pies in the rupee.
4. On the next Rs. 5,000 of total income . . .	Two annas in the rupee.
5. On the balance of total income . . .	Two annas and six pies in the rupee.

Provided that—

(i) no income-tax shall be payable on a total income which does not exceed Rs. 2,000;

(ii) the income-tax payable shall in no case exceed half the amount by which the total income exceeds Rs. 2,000.

Registration of Foreigners.

1922 B. In the case of every company and local authority, and in every case in which, under the provisions of the Indian Income-tax Act, 1922, income-tax is to be charged at the maximum rate:—

	Rate.
On the whole of total income	Two annas and six pies in the rupee

PART II.

RATES OF SUPER-TAX.

A. In the case of every individual, Hindu undivided family, un-registered firm and other association of persons, not being a case to which paragraph B of this Part applies.—

1. On the first Rs. 25,000 of total income Nil.
2. On the next Rs. 10,000 of total income One anna in the rupee.
3. On the next Rs. 20,000 of total income Two annas in the rupee.
4. On the next Rs. 70,000 of total income Three annas in the rupee.
5. On the next Rs. 75,000 of total income Four annas in the rupee.
6. On the next Rs. 1,50,000 of total income Five annas in the rupee.
7. On the next Rs. 1,50,000 of total income Six annas in the rupee.
8. On the balance of total income Seven annas in the rupee

B. In the case of every Company and local authority.

On the whole of total income	One anna in the rupee
--	-----------------------

THE REGISTRATION OF FOREIGNERS ACT, 1939.

ACT NO. XVI of 1939¹.

[8th April, 1939]

An Act to provide for the registration of foreigners in ²[the
~~Provinces of~~ India].

¹ For the Statement of Objects and Reasons, see Gazette of India, Extraordinary, 1939 p. 89; for the Report of the Select Committee, see Gazette of India, 1939, Pt. V. p. 111.

This Act has been applied to—

all the excluded and partially excluded areas in Assam by Notification No. 1696-G.S., dated 12th June, 1939, published in Assam Gazette;

the partially excluded areas in the province of Madras, see Notification No. 89, dated 25th September, 1939, Fort St. George Gazette, Pt. I, dated 3rd October, 1939;

excluded areas in the province of Madras, see Notification No. 91, dated 29th September, 1939, Fort St. George Gazette, Pt. I, dated 10th October, 1939.

² Subs. by the A.O. 1948 for "British India".

WHEREAS it is expedient to provide for the registration of foreigners entering, being present in, and departing from, ¹[the Provinces of India],

It is hereby enacted as follows:—

Short title and extent. 1. (1) This Act may be called the Registration of Foreigners Act, 1939.

(2) It extends to ^{whole} ~~all~~ the Provinces of India].

Definitions.

(a) "foreigner" means a person who is not a citizen of India;

11/57

(i) a British subject domiciled in the United Kingdom, or

³[(ii) a British subject domiciled in India; or

(iii) the Ruler or subject of an Acceding State or other Indian State; or]

(iv) a person duly appointed by a foreign Government to exercise diplomatic functions; or

(v) a consul or a vice-consul;

(b) "prescribed" means prescribed by rules made under this Act.

Power to make rules.

3. The Central Government may after previous publication, by notification in the official Gazette, make rules with respect to foreigners for any or all of the following purposes, that is to say—

(a) for requiring any foreigner entering, or being present in, ¹~~[the Provinces]~~ to report his presence to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;

(b) for requiring any foreigner moving from one place to another place in ²~~[the Provinces]~~ to report, on arrival at such other place, his presence to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;

(c) for requiring any foreigner who is about to leave ³~~[the Provinces]~~ to report the date of his intended departure and such other particulars as may be prescribed to such authority and within such period before departure as may be prescribed;

(d) for requiring any foreigner entering, being present in, or departing from, ¹~~[the Provinces]~~ to produce, on demand by a prescribed authority, such proof of his identity as may be prescribed;

¹ Subs. by the A.O. 1948 for "British India".

² Subs. by the A.O. 1948 for "the whole of British India".

³ Subs. by the A.O. 1948 for the original clauses.

ordinance
I/57

* India

(e) for requiring any person having the management of any hotel, boarding-house, sarai or any other premises of like nature to report the name of any foreigner residing therein for whatever duration, to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;

(f) for requiring any person having the management or control of any vessel or air craft to furnish to a prescribed authority such information as may be prescribed regarding any foreigner entering, or intending to depart from ^{the Pro-}~~vinces~~ in such vessel or aircraft, and to furnish to such authority such assistance as may be necessary or prescribed for giving effect to this Act;

(g) for providing for such other incidental or supplementary matters as may appear to the Central Government necessary or expedient for giving effect to this Act.

4. If any question arises with reference to this Act or any rule made thereunder, whether any person is or is not a foreigner, or is or is not a foreigner of a particular class or description, the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872, lie upon such person.

I of 1872.

5. Any person who contravenes, or attempts to contravene, or fails to comply with, any provision of any rule made under this Act shall be punished, if a foreigner, with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both, or if not a foreigner, with fine which may extend to five hundred rupees.

Penalties.

6. The Central Government may, by order, declare that any or all of the provisions of the rules made under this Act shall not apply, or shall apply only with such modifications or subject to such conditions as may be specified in the said order, to or in relation to any individual foreigner or any class or description of foreigner:

Power to exempt from application of Act.

Provided that a copy of every such order shall be placed on the table of ² * * * the Central Legislature as soon as may be after its promulgation.

Parliament

7. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act

Protection to persons acting under this Act.

8. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Foreigners Act, 1864 and any other law for the time being in force.

Application of other laws not barred.

III of 1864.

1946

9. —————

¹ Subs. by the A.O. 1948 for "British India".

² The words "both Houses of" rep. by the A.O. 1948.

THE COAL MINES SAFETY (STOWING) ACT, 1939.

ACT NO. XIX OF 1939¹.

[21st April, 1939.]

An Act to make further provision for safety in coal mines.

WHEREAS it is expedient to make further provision for safety in coal mines by taking measures to facilitate or require therein the carrying out of the operation known as stowing ²[and other operations], and to provide for the creation of a fund for the assistance of such ³[operations], in the manner hereinafter provided;

It is hereby enacted as follows—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Coal Mines Safety (Stowing) Act, 1939.

(2) It extends to ⁴[all the Provinces of India] except Assam and ⁵[East Punjab].

(3) It shall come into force on such ⁶date as the Central Government may, by notification in the official Gazette, appoint.

Definition.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “agent”, “mine” and “owner” have the meanings respectively assigned to them in section 3 of the Indian Mines Act, 1923;

IV of

(b) “Board” means the Coal Mines Stowing Board constituted under section 3;

(c) “Chief Inspector” and “Inspector” mean the persons respectively appointed to be Chief Inspector of Mines and Inspector of Mines under sub-section (1) of section 4 of the Indian Mines Act, 1923 and the provisions of that Act ^{IV of} shall apply to the Chief Inspector and to all Inspectors while exercising their powers under this Act or the rules made thereunder;

(d) “fund” means the Coal Mines Stowing Fund;

¹ For the Statement of Objects and Reasons, see Gazette of India, 1939, Pt. V, p. 29; for the Report of Select Committee, see *ibid.*, p. 37.

This Act has been brought into force in the district of Sambalpur in the Province of Orissa with effect from 23rd July 1942 by the Orissa Laws Validating Regulation, 1943 (Orissa Regulation I of 1943).

² Ins. by s. 2 of the Coal Mines Safety (Stowing) Amendment Act, 1940 (11 of 1940).

³ Subs. for “operation”, *ibid.*

⁴ Subs. by the A.O. 1946 for “the whole of British India”.

⁵ Subs. by the A.O. 1948 for “the Punjab”.

⁶ The 27th May, 1939, see Gazette of India, 1939, Pt. I, p. 807.

- (e) "prescribed" means prescribed by rules made under this Act;
- (f) "soft coke" means of coke which is unsuitable for metallurgical purposes, and "hard coke" means all coke which is not soft coke;
- (g) "stowing" means the operation of filling with sand or other incombustible material space left underground in a coal mine by the extraction of coal.

3. (1) The Central Government shall, as soon as may be after the Constitution of Board. commencement of this Act, constitute a Board to be called the Coal Mines Stowing Board to administer the fund, and such Board shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue and be sued.

(2) The Board shall consist of the following members, namely:—

- (i) a person ¹ * * * appointed by the Central Government, as Chairman;
- (ii) the Chief Inspector, or an Inspector appointed by the Central Government in this behalf;
- (iii) two persons nominated by the Indian Mining Association;
- (iv) one person nominated by the Indian Mining Federation;
- (v) one person nominated by the Indian Colliery Owners' Association:

Provided that if, within the prescribed period, anybody fails to make the nomination which it is entitled to make under this sub-section, the Central Government may itself nominate a person to fill the place on the Board.

(3) Where a nominated member dies, resigns, ceases to reside in ²[the Provinces] or becomes incapable of acting, the Central Government shall, on the recommendation of the body which would have been entitled to make the nomination if it had been a first nomination under sub-section (2), or where such recommendation is not made within the prescribed period, may, on its own initiative, nominate a person to fill the vacancy.

(4) No act done by the Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Board.

4. (1) The Board may, at any time and for such period as it thinks fit, co-opt as members of the Board any persons possessing such technical qualifications as may be prescribed.

Power to Board to co-opt members.

(2) A member co-opted under sub-section (1) shall exercise all the powers and functions of a member under this Act, except that he shall not be entitled to vote on any question coming before the Board.

¹ The words "in the service of the Crown" rep. by s. 2 of the Coal Mines Safety (Stowing) Amendment Ordinance, 1942 (25 of 1942).

² Subs. by the A.O. 1948, for "British India".

Imposition
of excise
duty.

5. With effect from such date as the Central Government may, by notification in the official Gazette, appoint in this behalf, there shall be levied and collected on all coal raised and despatched, and on all soft coke manufactured and despatched, from collieries in ¹[the Provinces] a duty of excise as may, by notification in the official Gazette, be fixed from time to time by the Central Government, subject to a maximum rate of three annas per ton; similarly there shall be levied and collected on such descriptions of hard coke as may be prescribed a duty of excise as may, by notification in the official Gazette, be fixed from time to time by the Central Government, subject to a maximum rate of one and a half times the rate of excise duty for the time being in force in respect of coal and soft coke.

Imposition
of customs
duty.

6. During the period in which a duty of excise is being levied under section 5, the Central Government may, by notification in the official Gazette, impose on all coal and soft coke and on such descriptions of hard coke as may be prescribed under section 5, imported into ¹[the Provinces] from any foreign country or brought into ¹[the Provinces] from the territory of any Indian State ²* * *, a duty of customs, ³[(which shall be in addition to any duty of customs for the time being leviable under any other Act)], at rates equivalent to the rates of the duty of excise levied under section 5 of this Act.

Payment to
Board of sum
equivalent to
the net pro-
ceeds of the
excise duty.

7. The Central Government shall, as soon as may be in each financial year, pay to the Board a sum equivalent to the net proceeds ⁴[determined in such manner as may be prescribed] of the duty of excise realised under section 5 during the preceding year.

Moneys re-
ceived by the
Board to be
credited to
the fund.

8. (1) The sum referred to in section 7 and any other moneys received by the Board shall be credited to a fund to be called the Coal Mines Stowing Fund, which shall be applied by the Board in such manner and subject to such conditions as may be prescribed, to—

- (i) meeting the expenses in connection with the administration and the furtherance of the objects of this Act;⁵*
- (ii) the grant of stowing materials and other assistance for stowing operations to owners, agents or managers of coal mines;
- (iii) the execution of ⁷[stowing and other operation] in furtherance of the objects of this Act; and
- (iv) the prosecution of research work connected with safety in mines.]

¹ Subs. by the A.O. 1948 for "British India".

² Certain words were rep. by s. 3 of the Coal Mines Safety (Stowing) Amendment Act, 1940 (11 of 1940).

³ Ins., *ibid.*

⁴ Subs. for "(determined in like manner to that provided in sub-section (1) of section 144 of the Government of India Act, 1935)" by s. 4, *ibid.*

⁵ The word "and" was rep. by s. 5, *ibid.*

⁶ Ins., *ibid.*

⁷ Subs. for "operations other than stowing" by s. 2 of the Coal Mines Safety (Stowing) Amendment Act, 1944 (3 of 1944).

(2) The Board shall keep accounts of the fund, and such accounts shall be examined and audited at the prescribed times by auditors appointed in this behalf by the Central Government.

9. (1) The Chief Inspector or any Inspector may make such examination and inquiries as he thinks fit in order to ascertain whether the provisions of this Act and of any rules and orders made thereunder are being complied with. Powers of Inspectors.

(2) The Chief Inspector or any Inspector may, with such assistants, if any, as he thinks fit, enter, inspect and examine at any time by day or night any coal mine in respect of which assistance is being, or has been, given under this Act, in order to ascertain the amount of sand or other incombustible material used in stowing in the mine or to ensure that stowing¹ [or any other operation towards which assistance may be granted under this Act], has been, or is being, done effectively:

Provided that the power conferred by this sub-section shall not be exercised in such a manner as unreasonably to impede or obstruct the working of the mine.

IV of 1923.

(3) Without prejudice to the provisions of section 19 of the Indian Mines Act, 1923, the Chief Inspector or any Inspector may, by order in writing addressed to the owner, agent or manager of a coal mine, require him to take such protective measures, including stowing, in the mine as the Chief Inspector or the Inspector may think necessary, if in the opinion of the Chief Inspector or Inspector—

(a) the extraction or reduction of pillars in any part of the mine is likely to cause the crushing of pillars or the premature collapse of any part of the workings or otherwise endanger human life or the mine, or

(b) adequate provision against the outbreak of fire or flooding has not been made by providing for the sealing off and isolation of any part of the mine or for restricting the area that might be affected by fire or flooding, as the case may be.

IV of 1923

10. The provisions of sub-sections (3) to (6) (both inclusive) of section 19 of the Indian Mines Act, 1923 shall apply to an order made under sub-section (3) of section 9 of this Act as they apply to an order made under sub-section (2) of section 19 of that Act, and all the provisions of the Indian Mines Act, 1923 (except sub-section (1) of section 11 thereof), affecting committees appointed for the purposes of that Act or relating to the disposal of references made to such committees, shall apply, *mutatis mutandis* and so far as may be, to a committee appointed to inquire into a reference under this Act and to the disposal of such reference. Application of Act IV of 1923.

²[Provided that the power conferred by the proviso to sub-section (6) of the said section 19 to suspend the operation of a requisition under sub-section (1) of that section shall include a power similarly to suspend the operation of an order made under sub-section (3) of section 9 of this Act.]

¹ Ins. by s. 6 of the Coal Mines Safety (Stowing) Amendment Act, 1940 (11 of 1940).

² Ins. by s. 3 of the Coal Mines Safety (Stowing) Amendment Act, 1944 (3 of 1944).

Powers of
Board in
executing
operations.

¹[10A. (1) If in the opinion of the Board it is necessary or desirable that any protective measures, including stowing, required in furtherance of the object of this Act, should be undertaken directly by the Board, the Board may execute or cause to be executed such measures under its own supervision.

(2) For the purposes of this section the Board shall have the right for itself and all persons employed in the execution of any work undertaken under this section to enter upon any property in which the work is to be done and to do therein all things necessary for the execution of the work.

(3) No person shall obstruct or interfere with the execution of any work undertaken under this section, and no person shall remove or tamper with any plant or machinery or any stowing or other material used in the execution of such work.

(4) Whoever contravenes the provisions of sub-section (3) shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.]

Committees
of Inquiry.

11. (1) A committee appointed to inquire into a reference arising out of an order passed under sub-section (3) of section 9 shall consist of—

- (a) the Chairman of the Board as Chairman;
- (b) four members selected by the Chairman of the Board as follows:—
 - (i) two, from a panel of eight persons nominated by the Indian Mining Association;
 - (ii) one, from a panel of four persons nominated by the Indian Mining Federation;
 - (iii) one, from a panel of four persons nominated by the Indian Colliery Owners' Association; and
- (c) one member appointed by the Central Government to represent the interests of persons employed in coal mines.

(2) No person shall be nominated to the panels referred to in clause (b) of sub-section (1) unless he possesses such technical qualifications as may be prescribed.

(3) If any body fails, within the prescribed period, to make any nomination which it is entitled to make under sub-section (1) or to fill any vacancy in a panel, the Central Government shall itself nominate a sufficient number of persons to complete the panel.

Power to
make rules.

12. (1) The Central Government may, after previous publication, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such rules may provide for any or all of the following purposes, namely:—

- (a) the nomination, and term of office, of members of the Board appointed or nominated under section 3;

¹ Ins. by s. 4 of the Coal Mines Safety (Stowing) Amendment Act, 1944. (3 of 1944).

- (b) the powers and functions of, and the conduct of business by, the Board;
- ¹[(bb) the determination of the net proceeds of the duty of excise for the purposes of section 7];
- (c) prescribing the technical qualifications to be possessed by co-opted members of the Board and by persons nominated to the panels referred to in section 11;
- (d) prescribing the descriptions of hard coke on which a duty of excise may be levied under section 5;
- (e) regulating the levy, collection and payment of the duty of excise; and the imposition, collection and payment of the duty of customs;
- (f) prescribing the manner in which and the conditions under which sums at the credit of the fund may be applied;
- (g) prescribing the form in which the accounts of the fund shall be kept and the times at which such accounts shall be audited, and regulating the publication of the abstract of such accounts and the report of the auditors thereon, and prescribing the procedure in relation to any items of expenditure from the fund disallowed by the auditors;
- (h) any other matter which is to be or may be prescribed.

13. This Act applies to coal mines belonging to the Crown.

Application
to Crown
mines.

THE INDIAN SOFT COKE CESS COMMITTEE
(RECONSTITUTION AND INCORPORATION)
ACT, 1939.

²ACT No. XXIII OF 1939.

[21st April, 1939.]

An Act to reconstitute and incorporate the Committee constituted under the Indian Soft Coke Cess Act, 1929.

VIII of 1929.

WHEREAS it is expedient to reconstitute and incorporate the Committee constituted under the Indian Soft Coke Cess Act, 1929;

It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Soft Coke Cess Committee (Reconstitution and Incorporation) Act, 1939.

Short title,
commence-
ment and
duration.

¹ Ins. by s. 7 of the Coal Mines Safety (Stowing) Amendment Act, 1940 (11 of 1940).
² For the Statement of Objects and Reasons, see Gazette of India, 1939, Pt. V. p. 102.
This Act has been brought into force in the districts of Sambalpur and Koraput and Agency tract of the district of Ganjam with effect from the 23rd July, 1942 by the Orissa Laws Validating Regulation, 1943 (Orissa Regulation I of 1943).

(2) It shall come into force on such date¹ as the Central Government may, by notification in the official Gazette, appoint in this behalf, and shall remain in force as long only as sections 2 to 7 of the Indian Soft Coke Cess Act, 1929, remain in force.

VIII of 1

Reconstitution of the Indian Soft Coke Cess Committee.

2. On the commencement of this Act, the Committee constituted under sub-section (1) of section 4 of the Indian Soft Coke Cess Act, 1929, shall stand dissolved, and shall be reconstituted in the manner provided in section 4 of the said Act as amended by section 4 of this Act.

Vesting of moneys in the reconstituted Committee.

3. All the moneys held by the dissolved Committee shall vest in the Committee as reconstituted under section 2.

Amendment of Act VIII of 1929.

4. In the Indian Soft Coke Cess Act, 1929,—

VIII of 1

(1) in the long title and in the preamble, the word “and”, where it occurs for the first time, shall be omitted;

(2) in sub-section (1) of section 3, the word “and”, where it occurs for the second time, shall be omitted; and

(3) in section 4,—

(a) in sub-section (1),—

(i) in clause (iv), for the word “seven” the word “four” shall be substituted, and the word “and” shall be omitted;

(ii) after clause (v), the following clause shall be inserted, namely:—

“(vi) three persons nominated by the Indian Colliery Owners’ Association.”;

(b) after sub-section (1) the following sub-section shall be inserted, namely:—

“(1A) The Committee constituted under sub-section (1) shall be called the Soft Coke Cess Committee and shall be a body corporate and have perpetual succession and a common seal and shall by the said name sue and be sued.”

THE MEDICAL DIPLOMAS ACT, 1939.

²ACT No. XXVIII OF 1939.

[26th September, 1939.]

An Act to make the provision referred to in sub-section (1) of section 120 of the Government of India Act, 1935.

¹ The 15th July, 1939, see Gazette of India, 1939, Pt. I, p. 1221.

² For the Statement of Objects and Reasons, see Gazette of India, 1939, Pt. V, p. 148.

This Act has been applied to the Darjeeling district with effect from 5th December 1940, see late Bengal Govt. notification No. 2360-Medl., dated the 27th November, 1940; to all the partially excluded areas in the Province of Orissa by Orissa Govt. notification No. 3358-L.S.G., dated the 25th August 1941.

Repealed
No. 56

26 Geo. 5,c.2, **W**HEREAS it is expedient to make the provision relating to medical diplomas granted in the United Kingdom or Burma which is referred to in sub-section (1) of section 120 of the Government of India Act, 1935;

It is hereby enacted as follows:—

1. (1) This Act may be called the Medical Diplomas Act, 1939. Short title and extent.
- (2) It extends to [all the Provinces of India].

2. In this Act—

Definitions.

- (a) "diploma" has the meaning assigned to it in sub-section (7) of section 120 of the Government of India Act, 1935;
- (b) "United Kingdom" means the United Kingdom of Great Britain and Northern Ireland.

3. So long as the condition set out in sub-section (3) of section 120 of the Government of India Act, 1935, [as originally enacted] continues to be fulfilled, a British subject domiciled in the United Kingdom or India who, by virtue of a medical diploma granted to him in the United Kingdom, is, or is entitled to be, registered in the United Kingdom as a qualified medical practitioner shall not, by or under any law for the time being in force, be excluded from practising medicine, surgery or midwifery in [the Provinces] or in any part thereof, or from being registered as qualified so to do, on the ground that such diploma does not furnish a sufficient guarantee of his possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, except in accordance with the following conditions, namely:—

Conditions for excluding from practice British subjects domiciled in the United Kingdom or India who hold medical diplomas granted in the United Kingdom on the ground of inadequacy of such diplomas.

- (a) Notice of every proposal for excluding the holders of any such diploma from practice or registration shall be given in such form and in such manner as the Central Government may by rules made in this behalf prescribe, to the university or other body granting that diploma, and where such proposal is not made by the Central Government, to the Central Government also.
- (b) No such proposal shall become operative until the expiration of twelve months after the notices referred to in clause (a) have been given.

* * * * *

4. A British subject domiciled in Burma who, by virtue of a medical diploma granted to him in the United Kingdom or Burma, is, or is entitled to be, registered in the United Kingdom as a qualified medical practitioner shall not, by or under any law for the time being in force, be excluded from practising medicine, surgery or midwifery in

Conditions for excluding from practice British subjects domiciled in Burma who

¹ Subs. by the A.O. 1948 for "the whole of British India".

² Ins. by the A.O. 1948.

³ Subs. by the A.O. 1948 for "British India".

⁴ Item (c) rep. by the A.O. 1948.

¹[the Provinces] or in any part thereof, or from being registered as qualified so to do, on the ground that such diploma does not furnish a sufficient guarantee of his possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, except in accordance with conditions such as are set out in clauses ²[(a) and (b)] of section 3. hold medical diplomas granted in the United Kingdom or Burma on a similar ground.

THE COMMERCIAL DOCUMENTS EVIDENCE ACT, 1939.

³ACT No. XXX OF 1939.

[26th September, 1939.]

An Act to amend the Law of Evidence with respect to certain commercial documents.

WHEREAS it is expedient to amend the Law of Evidence with respect to certain commercial documents;

It is hereby enacted as follows:—

Short title
and extent.

A

(2) It extends to the whole of India except the territories to which, immediately before the 1st November 1956, were comprised in Part B States.

Statements
of relevant
facts in
scheduled
documents
to be them-
selves rele-
vant facts.

Act, 1872, statements of facts in issue or of relevant facts made in any document included in the Schedule as to matters usually stated in such document shall be themselves relevant facts within the meaning of that Act. I of 1872.

Presumption
as to genu-
ineness of
documents.

3. For the purposes of the Indian Evidence Act, 1872, and notwithstanding anything contained therein, a Court— I of 1872.

(a) shall presume, within the meaning of that Act, in relation to documents included in Part I of the Schedule, and

(b) may presume, within the meaning of that Act, in relation to documents included in Part II of the Schedule,—

that any document purporting to be a document included in Part I or Part II of the Schedule, as the case may be, and to have been duly made

¹ Subs. by the A.O. 1948, for "British India".

² Subs. by the A.O. 1948, for "(a), (b) and (c)".

³ For the Statement of Objects and Reasons, see Gazette of India, 1937, Pt. V, p. 119 for the Report of Select Committee see *ibid.*, 1939, Pt. V, p. 157.

This Act has been applied to the Darjeeling district, with effect from the 8th February, 1940, by the late Bengal Government Notification No. 381-J., dated 31st January, 1940.

⁴ Subs. by the A.O. 1948, for "the whole of British India".

by or under the appropriate authority, was so made and that the statements contained therein are accurate.

4. In the Schedule the expression "recognised Chamber of Commerce" means a Chamber of Commerce recognised by the Government of its country as being competent to issue certificates of origin, and includes any other association similarly recognised. Definition.

THE SCHEDULE.

(See sections 2 and 3.)

PART I.

Documents in relation to which the Court "SHALL presume."

1. Lloyd's Register of Shipping.
2. Lloyd's Daily Shipping Index.
3. Lloyd's Loading List.
4. Lloyd's Weekly Casualty Reports.
5. Certificate of delivery of goods to the Manchester Ship Canal Company.
6. Official log book, Supplementary Official log book and official wireless log kept by a British ship.
7. Certificate of Registry, Safety Certificate, Safety Radio-Telegraphy Certificate, Exemption Certificate, Certificate of Survey, Declaration of Survey, International Load Line Certificate, ^[British] India Load Line Certificate, Report of Survey of a ship provisionally detained as unsafe, Report of Survey to be served upon the master of a ship declared unsafe upon survey, Docking Certificate, Memorandum issued under Article 56 of the International Convention for the Safety of Life at Sea, 1929. xxxv/50
8. Certificates A and B, issued under the Indian Merchant Shipping Act, 1923.
9. The following documents relating to marine insurance, namely, insurance policy, receipt for premium, certificate of insurance and insurance cover note.
10. Certificate concerning the loss of country craft issued by the appropriate authority under Department of Commerce, Mercantile Marine Department Circular No. 2 of 1938.
11. Protest made before a Notary Public or other duly authorised official by a master of a ship relating to circumstances calculated to affect the liability of the ship-owner.
12. Licence or permit for radio-telegraph apparatus carried in ships or aircraft.
13. Certificate of registration of an aircraft granted by the Government of the country to which the aircraft belongs.
14. Certificate of airworthiness of an aircraft granted or validated by, or under the authority of, the Government of the country to which the aircraft belongs.
15. Licences and certificates of competency of aircraft personnel granted or validated by, or under the authority of, the Government of the country to which the personnel belongs.
16. Ground Engineer's Licence issued by a competent authority authorised in this behalf by Government.

¹ The general adaptation directed in para. 3(2) of the A.O. 1948 has not been carried out, as it is obviously inappropriate.

17. Consular Certificate in respect of goods shipped or shut out. consular certificates of origin, and consular invoice.

18. Certificate of origin of goods issued (but not merely attested) by a recognised Chamber of Commerce, or by [an Indian or British Consular officer, or by an Indian or British] Trade Commissioner or Agent.

19. Receipt for payment of customs duty issued by a Customs authority.

20. Schedule issued by a Port, Dock, Harbour, Wharfage or Warehouse authority, or by a Railway company, showing fees, dues, freights or other charges for the storage, transport or other services in connection with goods.

21. Tonnage schedule and schedule of fees, commission or other charges for services rendered, issued by a recognised Chamber of Commerce.

22. The publication known as the Indian Railway Conference Association Coaching and Goods Tariffs.

23. Copy, certified by the Registrar of Companies, of the memorandum or the articles of association of a company, filed under the Indian Companies Act, 1913.

24. Protest, noting and certifying the dishonour of a bill of exchange, made before a Notary Public or other duly authorised official.

PART II.

Documents in relation to which the Court "MAY presume".

1. Survey Report issued by a competent authority—

- (i) in respect of cargo loaded; or
- (ii) certifying the quantity of coal loaded; or
- (iii) in respect of the security of hatches.

2. Official log book, Supplementary Official log book and official wireless log kept by a foreign ship.

3. Dock certificate, dock chalan, dock receipt or warrant, Port Warehouse certificate or warrant, issued by, or under the authority of, a Port, Dock, Harbour or Wharfage authority.

4. Certificate issued by a Port, Dock, Harbour, Wharfage or other authority having control of acceptance of goods for shipping, transport or delivery, relating to the date or time of shipment of goods, arrival of goods for acceptance, arrival of vessels or acceptance or delivery of goods, or to the allocation of berthing accommodation to vessels.

5. Export Application issued by a Port authority showing dues paid, weight and measurement and the shutting out of a consignment.

6. Certificate or receipt showing the weight or measurement of a consignment issued by the official measurer of the Conference Lines, or by a sworn or licensed measurer, or by a recognised Chamber of Commerce.

7. Reports and publications issued by a Port authority showing the movement of vessels, and certificates issued by such authority relating to such movements.

¹ Subs. by the A.O., 1948 for "a British Consular officer or British or Indian".

8. Certificate of safety for flight signed by a licensed Ground Engineer.

9. Aircraft Log Book, Journey Log Book and Log Book, maintained by the owner or operator in respect of aircraft.

10. Passenger List or Manifest of Goods carried in public transport aircraft.

11. Passenger ticket, issued by a steamship company or air transport company.

12. Air Consignment Note and Baggage Check, issued by an air transport company in respect of goods carried by air, and the counterfoil or duplicate thereof retained by the carrier.

13. Aircraft Load Sheet.

14. Storage warrant of a warehouse recognised by a Customs, Excise, Port, Dock, Harbour or Wharfage authority.

15. Acknowledgment receipt for goods granted by a Port, Dock, Harbour, Wharfage or Warehouse authority or by a Railway or Steamship company.

16. Customs or Excise pass and Customs or Excise permit or certificate, issued by a Customs or Excise authority.

17. *Force majeure* certificate issued by a recognised Chamber of Commerce.

18. Receipt of a Railway or Steamship company granted to a consignor in acknowledgment of goods entrusted to the company for transport.

19. Receipt granted by the Posts and Telegraphs Department.

20. Certificate or survey award issued by a recognised Chamber of Commerce relating to the quality, size, weight or valuation of any goods, count of yarn or percentage of moisture in yarn and other goods.

21. Copy, certified by the Registrar of Companies, of the Balance Sheet, Profit and Loss Account, and audit report of a company, filed with the said Registrar under the Indian Companies Act, 1913, and the rules made thereunder.

THE INDIAN AIR FORCE VOLUNTEER RESERVE (DISCIPLINE) ACT, 1939.

¹ACT No. XXXVI OF 1939.

[29th September. 1939.]

An Act to provide for the discipline of members of the Indian Air Force Volunteer Reserve raised in ²[the Provinces] on behalf of His Majesty.

WHEREAS it is expedient to provide for the discipline of members of the Indian Air Force Volunteer Reserve raised in ²[the Provinces] on behalf of His Majesty;

It is hereby enacted as follows:—

¹ For the Statement of Objects and Reasons, see Gazette of India, 1939, Pt. V, p. 221.

This Act has been applied to the Darjeeling district by the late Bengal Govt. notification No. 372-P., dated 19th January, 1940.

² See the A.O. 1042 for "British India"

Short title,
extent and
commence-
ment.

1. (A) This Act may be called the Indian Air Force Volunteer Reserve (Discipline) Act, 1939.

(2) It extends to [all the Provinces of India] and applies to members of the Indian Air Force Volunteer Reserve wherever they may be.

(3) It shall come into force on such ² date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

Power to
make rules
for regula-
tion of the
Indian Air
Force Volun-
teer Reserve.

2. The Central Government may make rules for the government, discipline and regulation of the Indian Air Force Volunteer Reserve.

Liability to
Indian Air
Force Act,
1932.

3. Every member of the Indian Air Force Volunteer Reserve, while undergoing training in any unit, or otherwise, in pursuance of rules made under section 2, or when called into actual service in the Indian Air Force, in pursuance of the said rules, shall be subject to the Indian Air Force Act, 1932, in the same manner as a person belonging to His Majesty's Indian Air Force, and shall continue to be so subject until duly released from such training or service, as the case may be.

XIV of 1932.

Penalty for
failure to
attend when
required or
called up.

4. (1) If any member of the Indian Air Force Volunteer Reserve, when required, in pursuance of rules made under section 2, to join a unit or attend at any place for the purpose of undergoing training, fails without reasonable excuse to join or attend in accordance with such requirement, he shall be punishable with fine which may extend to two hundred rupees.

(2) If any member of the Indian Air Force Volunteer Reserve, when called into actual service in the Indian Air Force, and required by such call to join any unit or attend at any place, fails without reasonable excuse to comply with such requirement at or within such time as the Central Government may, by order, direct, he shall be liable to be apprehended and punished in the same manner as a person in or belonging to the Indian Air Force deserting or improperly absenting himself from duty, except that the punishment shall not exceed imprisonment which may extend to two years.

Rule of
evidence.

5. When any member of the Indian Air Force Volunteer Reserve is required, in pursuance of the rules made under section 2, to join any unit or attend at any place for the purpose of undergoing training, or is called into actual service in the Indian Air Force, a certificate purporting to be signed by an officer appointed in this behalf under the said rules and stating that the said member failed to join or attend in accordance with such requirement or call shall, without proof of the signature or appointment of such officer, be evidence of the matter stated therein.

Jurisdiction.

6. No Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall try an offence punishable under sub-section (1) of section 4.

Repeal and
saving.

7. The Indian Air Force Volunteer Reserve (Discipline) Ordinance, 1939, is hereby repealed; and any rules made, anything done and any action taken under the said Ordinance shall be deemed, to have been made, done or taken under this Act as if this Act had commenced on the 16th day of September, 1939.

Ord. VII
of 1939.

¹ Subs. by the A.O. 1948 for "the whole of British India".

² The 6th January 1940, see notification No. 15, dated 6th January, 1940, Gazette of India, 1940, Pt. I, p. 14.

THE TRADE MARKS ACT, 1940.

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ACT No. V of 1940.¹

[11th March 1940.]

An Act to provide for the registration and more effective protection of Trade Marks.

WHEREAS it is expedient to provide for the registration and more effective protection of trade marks;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Trade Marks Act, 1940.

(2) It extends to ^{whole} ~~all the Provinces~~ of India.

(3) This section and section 85 shall come into force at once; the remaining provisions of the Act shall come into force on such ^{date} as the Central Government may, by notification in the official Gazette, appoint in this behalf.

Definitions.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) “associated trade marks” means trade marks deemed to be, or required to be registered as, associated trade marks under this Act;

(b) “certification trade mark” means a mark adapted in relation to any goods to distinguish in the course of trade goods certified by any person in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic, from goods not so certified and registrable as such under the provisions of Chapter VIII in respect of those goods in the name, as proprietor of the certification trade mark, of that person;

¹ For the Statement of Objects and Reasons, see Gazette of India, 1939, Part V p. 249 for the Report of the Select Committee, see *ibid*, 1940, Part V, page 51.

This Act has been applied to all the partially excluded areas of the Province of Orissa, subject to certain modifications, *vide* Orissa Govt. Notification No. 18008-Com. (c), dated 23rd December 1942.

² Subs. by the A. O. 1948 for “the whole of British India”.

³ The 1st June, 1942, see Gazette of India, Extraordinary, 1942, p. 284.

(Chapter I.—Preliminary.)

V of 1908

26 Geo. 5.
ch. 2

(d) "High Court" means --

(a) in relation to any State, the High Court for that State;

(b) in relation to the Union territories of Delhi and Himachal Pradesh, the High Court of Punjab;

(c) in relation to the Union territories of Manipur and Tripura, the High Court of Assam;

(d) in relation to the Union territory of the Andaman and Nicobar Islands, the High Court at Calcutta; and

(e) in relation to the Union territory of Laccadive, Minicoy and Anindivi Islands, the High Court of Kerala.

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(g) "permitted use" means the use of a trade mark by a registered user thereof in relation to goods with which he is connected in the course of trade and in respect of which for the time being the trade mark remains registered and he is registered as a registered user, being use such as to comply with any conditions or restrictions to which his registration is subject;

(h) "prescribed" means prescribed by rules made, in relation to proceedings before a High Court, by such High Court, and in other cases, by the Central Government;

(i) "registered" (with its grammatical variations) means registered under this Act;

(j) "registered trade mark" means a trade mark which is actually on the register;

(k) "registered user" means a person who is for the time being registered as such under section 41;

~~clause (kk) omitted by 111/51~~

(l) "trade mark" means a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right, either as proprietor or as registered user, to use the mark whether with or without any indication of the identity of that person;

(Chapter I.—Preliminary. Chapter II.—The Register and Conditions for Registration.)

(m) "transmission" means transmission by operation of law, devolution on the personal representative of a deceased person and any other mode of transfer, not being assignment;

(n) "tribunal" means the Registrar or, as the case may be, the Court before which the proceeding concerned is pending.

(2) References in this Act to the use of a mark shall be construed as references to the use of a printed or other visual representation of the mark, and references herein to the use of a mark in relation to goods shall be construed as references to the use thereof upon, or in any other relation whatsoever to such goods.

Application
of other laws
not barred.

3. The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force.

CHAPTER II.

THE REGISTER AND CONDITIONS FOR REGISTRATION.

The register
of trade
marks

4. (1) For the purposes of this Act there shall be established [at Bombay] a [Trade Marks Registry], and a record called the Register of Trade Marks (in this Act referred to as the register) shall be kept thereat wherein shall be entered all registered trade marks ^{3*} * * with the names, addresses and descriptions of their proprietors, notifications of assignments and transmissions, the names, addresses and descriptions of registered users, disclaimers, conditions, limitations, and such other matters relating to registered trade marks as may be prescribed, but there shall not be entered in the register any notice of any trust express, implied or constructive, nor shall any such notice be receivable by the Registrar.

(2) Subject to the superintendence and direction of the Central Government, the register shall be kept under the control and management of [an officer appointed by the Central Government], who shall ^{5*} * * * be called the Registrar of Trade Marks and is in this Act referred to as the Registrar.

¶(2A) The Central Government shall appoint two or more Deputy Registrars of Trade Marks to discharge under the superintendence and

¹ Subs. for "at the Patent Office" by s. 2 of the Trade Marks (Amendment) Act, 1943 (15 of 1943) (with effect from 5th June, 1943).

² Subs. for "Trade Mark Registry" by s. 2 of the Trade Marks (Amendment) Act, 1941 (27 of 1941).

³ The words "except those entered in the Bombay register under Chapter IX", which had been inserted by s. 2 of Act 27 of 1941, were rep. by s. 2 of Act 15 of 1943 (with effect from 5th June, 1943).

⁴ Subs. for "the Controller of Patents and Designs" by s. 2 of Act 15 of 1943 (with effect from 5th June, 1943).

⁵ The words "for the purposes of this Act" rep. *ibid*, (with effect from 5th June, 1943).

⁶ Subs. by s. 2 of the Trade Marks (Amendment) Act, 1946 (12 of 1946) for subsection (2A) which had been inserted by s. 2 of Act 15 of 1943.

(Chapter II.—The Register and Conditions for Registration.)

direction of the Registrar such functions of the Registrar under this Act as he may from time to time authorise them to discharge; and any reference in this Act to the Registrar shall include a reference to any Deputy Registrar when so discharging any such function.

(2B) The Central Government may by notification in the official Gazette authorise the Registrar to delegate any particular functions of the Registrar to officers other than the Deputy Registrars of Trade Marks.]

(3) The register shall at all convenient times be open to the inspection of the public, subject to such conditions and restrictions as may be prescribed.

¹[(4) There shall be a seal for the Trade Marks Registry.]

²[4A. (1) There shall be established at Calcutta for the purpose of facilitating the registration of trade marks a branch of the Trade Marks Registry. Branch of Trade Marks Registry.

(2) There shall be kept at the said branch a copy of the Register and the Refused Textile Marks List, and the said copies shall at all convenient times be open to the inspection of the public in the same manner as the originals thereof.]

5. (1) A trade mark may be registered only in respect of particular goods or classes of goods. Registration to be in respect of particular goods.

(2) Any question arising as to the class within which any goods fall shall be determined by the Registrar whose decision in the matter shall be final.

6. (1) A trade mark shall not be registered unless it contains or consists of at least one of the following essential particulars, namely:— Distinctive-ness requisite for registration.

- (a) the name of a company, individual, or firm, represented in a special or particular manner;
- (b) the signature of the applicant for registration or some predecessor in his business;
- (c) one or more invented words;
- (d) one or more words having no direct reference to the character or quality of the goods, and not being, according to its ordinary signification, a geographical name or surname or the name of a sect, caste or tribe in India;
- (e) any other distinctive mark, provided that a name, signature, or any word, other than such as fall within the descriptions in the above clauses, shall not be registrable except upon evidence of its distinctiveness.

(2) For the purposes of this section, the expression "distinctive" means adapted, in relation to the goods in respect of which a trade

¹ Ins. by s. 2 of the Trade Marks (Amendment) Act, 1943 (15 of 1943) (with effect from 5th June, 1943).

² Ins. by s. 2A, *ibid* (with effect from 5th June, 1943).

(Chapter II.—The Register and Conditions for Registration.)

mark is proposed to be registered, to distinguish goods with which the proprietor of the trade mark is or may be connected in the course of trade from goods in the case of which no such connection subsists, either generally or, where the trade mark is proposed to be registered subject to limitations, in relation to use within the extent of the registration.

(3) In determining whether a trade mark is adapted to distinguish as aforesaid, the tribunal may have regard to the extent to which—

- (a) the trade mark is inherently so adapted to distinguish, and
- (b) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact so adapted to distinguish :

Provided that in the case of a trade mark which has been continuously used (either by the applicant for registration or by some predecessor in his business, and either in its original form or with additions or alterations not substantially affecting its identity) in relation to the same goods as those in relation to which registration is applied for, during a period from a date prior to the 25th day of February, 1937, to the date of application for registration, the Registrar shall not refuse registration by reason only of the fact that the trade mark is not adapted to distinguish as aforesaid, and may accept evidence of acquired distinctiveness as entitling the trade mark to registration.

Limitation
as to colour.

7. (1) A trade mark may be limited wholly or in part to one or more specified colours, and any such limitation shall be taken into consideration by any tribunal having to decide on the distinctive character of the trade mark.

(2) So far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Prohibition
of registra-
tion of
certain
matter.

8. No trade mark nor part of a trade mark shall be registered which consists of, or contains, any scandalous design, or any matter the use of which would—

- (a) by reason of its being likely to deceive or to cause confusion or otherwise, be disentitled to protection in a Court of justice; or
- (b) be likely to hurt the religious susceptibilities of any class of His Majesty's subjects; or
- (c) be contrary to any law for the time being in force or to morality.

Use of
names of
chemical
elements
barred.

9. No word which is the commonly used and accepted name of any single chemical element or single chemical compound (as distinguished from a mixture) shall be registered as a trade mark in respect of a chemical substance or preparation, and any such registration shall, notwithstanding anything in section 24, be deemed for the purposes of section 46 to be an entry made in the register without sufficient cause or an entry wrongly remaining on the register, as the circumstances may require :

(Chapter II.—The Register and Conditions for Registration.)

Provided that this section shall not apply to a word which is used to denote only a brand or make of the element or compound as made by the proprietor or a registered user of the trade mark, as distinguished from the element or compound as made by others, and in association with a suitable name or description open to the public use.

10. (1) Save as provided in sub-section (2), no trade mark shall be registered in respect of any goods or description of goods which is identical with a trade mark belonging to a different proprietor and ~~either already on the register or already registered in any Acceding State or other Indian State~~ to which section 22A for the time being applies in respect of the same goods or description of goods, or which so nearly resembles such trade mark as to be likely to deceive or cause confusion.

Prohibition of registration of identical, or similar, trade mark.

(2) In case of honest concurrent use or of other special circumstances which, in the opinion of the Registrar, make it proper so to do he may permit the registration by more than one proprietor of trade marks which are identical or nearly resemble each other in respect of the same goods or description of goods, subject to such conditions and limitations, if any, as the Registrar may think fit to impose.

(3) Where separate applications are made by different persons to be registered as proprietors respectively of trade marks which are identical or nearly resemble each other, in respect of the same goods or description of goods, the Registrar may refuse to register any of them until their rights have been determined by a competent Court.

11. (1) Where the proprietor of a trade mark claims to be entitled to the exclusive use of any part thereof separately, he may apply to register the whole and the part as separate trade marks.

Registration of parts of trade marks and of trade marks as a series.

(2) Each such separate trade mark shall satisfy all the conditions applying to, and have all the incidents of, an independent trade mark.

(3) Where a person claiming to be the proprietor of several trade marks in respect of the same goods or description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

- (a) statements of the goods in relation to which they are respectively used or proposed to be used; or
- (b) statements of number, price, quality, or names of places; or
- (c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or
- (d) colour;

seeks to register those trade marks, they may be registered as a series in one registration.

¹ Subs. for "already on the register" by s. 3 of the Trade Marks (Amendment) Act, 1946 (12 of 1946).

² Subs. by the A. O. 1948 for "Indian State".

(Chapter II.—The Register and Conditions for Registration.

Chapter III.—Procedure for, and duration of, Registration.)

Associated
trade marks.

12. (1) Where a trade mark which is registered, or is the subject of an application for registration, in respect of any goods is identical with another trade mark which is registered, or is the subject of an application for registration, in the name of the same proprietor in respect of the same goods or description of goods, or so nearly resembles it as to be likely to deceive or cause confusion if used by a person other than the proprietor, the Registrar may at any time require that the trade marks shall be entered on the register as associated trade marks.

(2) Where a trade mark and any part thereof are, in accordance with the provisions of sub-section (1) of section 11, registered as separate trade marks in the name of the same proprietor, they shall be deemed to be, and shall be registered as, associated trade marks.

(3) All trade marks registered in accordance with the provisions of sub-section (3) of section 11 as a series in one registration shall be deemed to be, and shall be registered as, associated trade marks.

(4) On application made in the prescribed manner by the registered proprietor of two or more trade marks registered as associated trade marks, the Registrar may dissolve the association as respects any of them if he is satisfied that there would be no likelihood of deception or confusion being caused if that trade mark were used by any other person in relation to any of the goods in respect of which it is registered, and may amend the register accordingly.

Registration
subject to
disclaimer.

13. If a trade mark contains—

(a) any part not separately registered as a trade mark in the name of the proprietor, or for the separate registration of which no application has been made, or

(b) any matter common to the trade, or otherwise of a non-distinctive character,

the tribunal, in deciding whether the trade mark shall be entered or shall remain on the register, may require, as a condition of its being on the register, that the proprietor shall either disclaim any right to the exclusive use of such part or of all or any portion of such matter, as the case may be, to the exclusive use of which the tribunal holds him not to be entitled, or make such other disclaimer as the tribunal may consider necessary for the purpose of defining the rights of the proprietor under the registration:

Provided that no disclaimer shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

CHAPTER III.

PROCEDURE FOR, AND DURATION OF, REGISTRATION.

Application
for registra-
tion.

14. (1) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him who is desirous of registering it shall

(Chapter III.—Procedure for, and duration of, Registration.)

apply in writing to the Registrar in the prescribed manner, and subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modifications, conditions or limitations, if any, as he may think fit.

(2) In the case of a refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving thereat.

(3) The tribunal may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as it may think fit.

15. (1) When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted, together with the conditions and limitations, if any, subject to which it has been accepted, to be advertised in the prescribed manner: Opposition
to registra-
tion.

Provided that the Registrar may cause an application to be advertised before acceptance if it relates to a trade mark to which clause (e) of sub-section (1) of section 6 applies, or in any other case where it appears to him that it is expedient by reason of any exceptional circumstances so to do, and where an application has been so advertised the Registrar may, if he thinks fit, advertise it again when it has been accepted, but shall not be bound so to do.

(2) Any person may, within the prescribed time from the date of the advertisement of an application, give notice in writing in the prescribed manner to the Registrar of opposition to the registration.

(3) The Registrar shall serve in the prescribed manner a copy of the notice on the applicant, and within the prescribed time the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement, the Registrar shall serve in the prescribed manner a copy thereof on the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions or limitations, if any, registration is to be permitted.

(5) If a person giving notice of opposition or an applicant sending a counter-statement after receipt of a copy of such notice, or an appellant against any order of the Registrar under section 14 or this section, neither resides nor carries on business in ¹the Provinces, the tribunal may require him to give security for costs of the proceedings before it.

India

¹ Subs. by the A. O. 1948 for "British India".

(Chapter III.—Procedure for, and duration of, Registration.)

and in default of such security being duly given may treat the opposition or application or appeal, as the case may be, as abandoned.

Registration.

16. (1) When an application for registration of a trade mark has been accepted and either has not been opposed and the time for notice of opposition has expired, or having been opposed, has been decided in favour of the applicant, the Registrar shall, unless the application has been accepted in error, or unless the Central Government otherwise directs, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the making of the said application, and that date shall, subject to any directions made under section 83 applicable to such trade mark, be deemed for the purposes of this Act to be the date of registration.

(2) On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration thereof sealed with the seal of the ¹[Trade Marks Registry].

(3) Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

Jointly
owned trade
marks.

17. (1) Save as provided in sub-section (2), nothing in this Act shall authorise the registration of two or more persons who use a trade mark independently, or propose so to use it, as joint proprietors thereof.

(2) Where the relations between two or more persons interested in a trade mark are such that no one of them is entitled as between himself and the other or others of them to use it except—

(a) on behalf of both or all of them, or

(b) in relation to an article with which both or all of them are connected in the course of trade;

those persons may be registered as joint proprietors of the trade mark, and this Act shall have effect in relation to any rights to the use of the trade mark vested in those persons as if those rights had been vested in a single person.

Duration and
renewal of
registration.

18. (1) The registration of a trade mark shall be for a period of seven years, but may be renewed from time to time in accordance with the provisions of this section.

(2) The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of the trade mark for a period of

¹ Subs. by the Trade Marks (Amendment) Act, 1943 (15 of 1943) (with effect from 5th June, 1943) for "Patent Office".

(Chapter III.—Procedure for, and duration of, Registration.

Chapter IV.—Effect of Registration.)

fifteen years from the date of expiration of the original registration or of the last renewal of registration, as the case may be (which date is in this section referred to as "the expiration of the last registration").

(3) At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained, and if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with the Registrar may remove the trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

19. Where a trade mark has been removed from the register ¹under this Act, or from the register of trade marks in any ²Acceding State or other Indian State] to which section 82A for the time being applies for failure to pay the fee for renewal, it shall nevertheless, for the purpose of any application for the registration of another trade mark during one year next after the date of the removal, be deemed to be a trade mark already on the register, unless the tribunal is satisfied either—

Effect of removal from register for failure to pay fee for renewal.

- (a) that there has been no *bona fide* trade use of the trade mark which has been removed during the two years immediately preceding its removal; or
- (b) that no deception or confusion would be likely to arise from the use of the trade mark which is the subject of the application for registration by reason of any previous use of the trade mark which has been removed.

CHAPTER IV.

EFFECT OF REGISTRATION.

20. (1) No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered trade mark unless such trade mark has been continuously in use since before the 25th day of February, 1937, by such person or by a predecessor in title of his and unless an application for its registration, made within five years from the commencement of this Act, has been refused; and the Registrar shall, on application in the prescribed manner, grant a certificate that such application has been refused.

No action for infringement of unregistered trade mark.

(2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.

¹ Ins. by s. 4 of the Trade Marks (Amendment) Act, 1946 (12 of 1946).

² Subs. for "Indian State" by S. 3., Sch II of Act 40 of 1949.

(Chapter IV.—Effect of Registration.)

Right conferred by registration.

21. ¹[(1)] Subject to the provisions of sections 22, 25 and 26, the registration of a person in the register as proprietor of a trade mark in respect of any goods shall, ² * * *, give to that person the exclusive right to the use of the trade mark in relation to those goods and, without prejudice to the generality of the foregoing provision, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a registered user thereof using by way of the permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either—

(a) as being used as a trade mark; or

(b) to import a reference to some person having the right either as a proprietor or as registered user to use the trade mark or to goods with which such a person as aforesaid is connected in the course of trade.

1/51 ~~¹(2) A person registered in any ³[Acceding State or other Indian State] to which section 82A for the time being applies, as proprietor of a trade mark shall have the same rights in respect thereof as are conferred by this section on a person registered under this Act as proprietor of a trade mark.]~~

No infringement in certain circumstances.

22. (1) The right to the use of a trade mark given under section 21 by registration shall be subject to any conditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in, in any place, or in relation to goods to be exported to any market, or in any other circumstances, to which, having regard to any such limitations the registration does not extend.

(2) The said right to the use of a trade mark shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

(a) in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark if, as to those goods or a bulk of which they form part, the proprietor or the registered user conforming to the permitted use has applied the trade mark and has not subsequently removed or obliterated it, or has at any time expressly or impliedly consented to the use of the trade mark; or

(b) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the trade mark

¹ S. 21 was re-numbered² as sub-section (1) and sub-section (2) ins. by s. 5 of the Trade Marks (Amendment) Act, 1946 (12 of 1946).

² The words "if valid" were rep. *ibid.*

³ Subs. by the A. O. 1948 for "Indian State".

(Chapter IV.—Effect of Registration.)

has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact a connection in the course of trade between any person and the goods.

(3) The use of a registered trade mark, being one of ¹[two or more trade marks registered under this Act or in any ²~~Acceding State or other Indian State~~] to which section 82A for the time being applies, which are identical or nearly resemble each other, in exercise of the right to the use of that trade mark given by registration as aforesaid, shall not be deemed to be an infringement of the right so given to the use of any other of those trade marks. 11/51

23. In all legal proceedings relating to a ³[trade mark registered under this Act or in any ⁴~~Acceding State or other Indian State~~] to which section 82A for the time being applies, the fact that a person is registered as proprietor thereof shall be *prima facie* evidence of the validity of the original registration of the trade mark and of all subsequent assignments and transmissions thereof. Registration to be *prima facie* evidence of validity.

24. In all legal proceedings relating to a registered trade mark, the original registration of the trade mark shall after the expiration of seven years from the date of such original registration be taken to be valid in all respects unless such registration was obtained by fraud, or unless the trade mark offends against the provisions of section 8. Registrati on to be conclu- sive as to validity after seven years.

25. Nothing in this Act shall entitle the proprietor or a registered user of a registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date prior— Saving for vested rights.

(a) to the use of the first-mentioned trade mark in relation to those goods by the proprietor or a predecessor in title of his, or

(b) to the registration of the first-mentioned trade mark in respect of those goods in the name of the proprietor or a predecessor in title of his,

whichever is the earlier, or to object (on such use being proved) to registration of that identical or nearly resembling trade mark in respect of those goods under sub-section (2) of section 10.

¹ Subs. for "two or more registered trade marks" by s 6 of the Trade Marks (Amendment) Act, 1946 (12 of 1946).

² Subs for "Indian State" by S. 3., & Sch II, Act 40 of 1949.

³ Subs. for "registered trade marks" by s. 7 of Act 12 of 1946.

⁴ Sub. for "Indian State" by A. O. 1948

(Chapter IV.—Effect of Registration.)

Saving for
use of name,
address, or
description
of goods.

26. No registration of a trade mark shall interfere with any *bona fide* use by a person of his own name or that of his place of business, or of the name, or of the name of the place of business, of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods, not being a description that would be likely to be taken as importing any such reference as is mentioned in clause (b) of section 21 or in clause (b) of section 57.

Words used
as name or
description
of an article
or substance.

27. (1) The registration of a trade mark shall not be deemed to have become invalid by reason only of any use after the date of the registration of any words which the trade mark contains or of which it consists as the name or description of an article or substance:

Provided that, if it is proved either—

- (a) that there is a well-known and established use of the said words as the name or description of the article or substance by a person or persons carrying on a trade therein, not being used in relation to goods connected in the course of trade with the proprietor or a registered user of the trade mark or (in the case of a certification trade mark) goods certified by the proprietor; or
- (b) that the article or substance has been manufactured under a patent in force at or granted after the commencement of this section, that a period of two years or more after the cesser of the patent has elapsed, and that the said words are the only practicable name or description of the article or substance,—

the provisions of sub-section (2) shall apply.

(2) Where the facts mentioned in clause (a) or clause (b) of the proviso to sub-section (1) are proved with respect to any words, then—

* (a) for the purposes of any proceedings under section 46—

- (i) if the trade mark consists solely of such words, the registration of the trade mark, so far as regards registration in respect of the article or substance in question or of any goods of the same description, shall be deemed to be an entry wrongly remaining on the register;
- (ii) if the trade mark contains such words and other matter, the tribunal, in deciding whether the trade mark shall remain on the register, so far as regards registration in respect of the article or substance in question and of any goods of the same description, may, in case of a decision in favour of its remaining on the register, require as a condition thereof that the proprietor shall disclaim any right to the exclusive use in relation to that article or substance and any goods of the same description, of such words, provided that no disclaimer shall affect any rights of the proprietor of a trade mark except such as arise

(Chapter IV.—Effect of Registration. Chapter V.—
Assignment and Transmission.)

out of the registration of the trade mark in respect of which the disclaimer is made;

- (b) for the purposes of any other legal proceedings relating to the trade mark,—
 - (i) if the trade mark consists solely of such words, all rights of the proprietor under this Act or any other law to the exclusive use of the trade mark in relation to the article or substance in question or to any goods of the same description; or
 - (ii) if the trade mark contains such words and other matter, all such rights of the proprietor to the exclusive use of such words, in such relation as aforesaid,

shall be deemed to have ceased on the date at which the use mentioned in clause (a) of the proviso to sub-section (i) first became well-known and established, or at the expiration of the period of two years mentioned in clause (b) of the said proviso.

CHAPTER V.

ASSIGNMENT AND TRANSMISSION.

28. The person for the time being entered in the register as proprietor of a trade mark shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power to assign the trade mark, and to give effectual receipts for any consideration for such assignment. Power of Registered proprietor to assign & d give receipts.

29. Notwithstanding anything in any other law to the contrary, a registered trade mark shall, subject to the provisions of this Chapter, be assignable and transmissible whether in connection with the goodwill of a business or not, and in respect either of all of the goods in respect of which it is registered or of some only of those goods. Assignability of registered trade marks.

30. An unregistered trade mark shall be assignable and transmissible whether in connection with the goodwill of a business or not: Assignability of unregistered trade marks
Provided that, except in connection with the goodwill of a business, assignment or transmission shall be permissible only if—

- (a) at the time of assignment or transmission of the unregistered trade mark it is used in the same business as a registered trade mark, and
- (b) the registered trade mark is assigned or transmitted at the same time and to the same person as the unregistered trade mark, and
- (c) the unregistered trade mark relates to goods in respect of which the registered trade mark is assigned or transmitted.

(Chapter V.—Assignment and Transmission.)

Restrictions
on assign-
ment or
transmission
where
multiple
exclusive
rights would
be created.

31. (1) Notwithstanding anything in sections 29 and 30, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist, whether under this Act or any other law, exclusive rights in more than one of the persons concerned to the use, in relation to the same goods or description of goods, of trade marks nearly resembling each other or of identical trade marks, if, having regard to the similarity of the goods and of the trade marks, the use of the trade marks in exercise of those rights would be likely to deceive or cause confusion:

Provided that an assignment or transmission shall not be deemed to be invalid under this sub-section if the exclusive rights subsisting as a result thereof in the persons concerned respectively are, having regard to limitations imposed thereon, such as not to be exercisable by two or more of those persons in relation to goods to be sold, or otherwise traded in, within ^{India} ~~the Provinces~~ (otherwise than for export therefrom), or in relation to goods to be exported to the same market outside ~~the Provinces~~.

(2) The proprietor of a registered trade mark who proposes to assign it may submit to the Registrar in the prescribed manner a statement of case setting out the circumstances and the Registrar may issue to him a certificate stating whether, having regard to the similarity of the goods and of the trade marks referred to in the case, the proposed assignment would or would not be invalid under sub-section (1), and a certificate so issued shall, subject to appeal and unless it is shown that the certificate was obtained by fraud or misrepresentation, be conclusive as to the validity or invalidity under sub-section (1) of the assignment in so far as such validity or invalidity depends upon the facts set out in the case, but, as regards a certificate in favour of validity, only if application for the registration under section 35 of the title of the person becoming entitled is made within six months from the date on which the certificate is issued.

Restrictions
on assign-
ment or
transmission
when exclu-
sive rights
would be
created in
different
Parts of
the pro-
vinces.

32. Notwithstanding anything in sections 29 and 30, a trade mark shall not be assignable or transmissible in a case in which as a result of the assignment or transmission there would in the circumstances subsist whether under this Act or any other law, an exclusive right in one of the persons concerned to the use of the trade mark limited to use in relation to goods to be sold, or otherwise traded in, in any place in ^{India} ~~the Provinces~~ and an exclusive right in another of these persons to the use of a trade mark nearly resembling the first-mentioned trade mark or of an identical trade mark in relation to the same goods or description of goods limited to use in relation to goods to be sold, or otherwise traded in, in any other place in ^{India} ~~the Provinces~~:

Provided that in any such case, on application in the prescribed manner by the proprietor of a trade mark who proposes to assign it, or by a person who claims that a registered trade mark has been transmit-

(Chapter V.—Assignment and Transmission.)

ted to him or to a predecessor in title of his since the commencement of this Act, the Registrar, if he is satisfied that in all the circumstances the use of the trade mark in exercise of the said rights would not be contrary to the public interest, may approve the assignment or transmission, and an assignment or transmission so approved shall not, unless it is shown that the approval was obtained by fraud or misrepresentation, be deemed to be invalid under this section or section 31 if application for the registration under section 35 of the title of the person becoming entitled is made within six months from the date on which the approval is given or, in the case of a transmission, was made before that date.

33. Where an assignment in respect of any goods of a trade mark which is at the time of the assignment used in a business in those goods, is made after the commencement of this Act otherwise than in connection with the goodwill of that business, the assignment shall not take effect unless the assignee, not later than the expiration of six months from the date on which the assignment is made or within such extended period, if any, as the Registrar may allow, applies to the Registrar for directions with respect to the advertisement of the assignment, and advertises it in such form and manner and within such period as the Registrar may direct.

Conditions for assignment otherwise than in connection with the goodwill of a business.

34. (1) A certification trade mark shall not be assignable or transmissible otherwise than with the consent of the Central Government, for which application shall be made in writing in the prescribed manner through the Registrar.

Conditions for assignment and transmission of certification trade marks and associated trade marks.

(2) Associated trade marks shall be assignable and transmissible only as a whole and not separately.

35. (1) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall apply in the prescribed manner to the Registrar to register his title, and the Registrar shall, on receipt of the application and on proof of title to his satisfaction, register him as the proprietor of the trade mark in respect of the goods in respect of which the assignment or transmission has effect, and shall cause particulars of the assignment or transmission to be entered on the Register.

Registration of assignments and transmissions.

(2) Except for the purposes of an appeal against a decision of the Registrar under sub-section (1) or of an application under section 46, a document or instrument in respect of which no entry has been made in the register in accordance with sub-section (1) shall not be admitted in evidence before any tribunal in proof of the title to a trade mark unless the tribunal otherwise directs.

(Chapter VI.—Use of Trade Marks and Registered Users.)

CHAPTER VI.

USE OF TRADE MARKS AND REGISTERED USERS.

Proposed
use of trade
mark by
company to
be formed.

36. (1) No application for the registration of a trade mark in respect of any goods shall be refused, nor shall permission for such registration be withheld, on the ground only that it appears that the applicant does not use or propose to use the trade mark, if the Registrar is satisfied that a company is about to be formed and registered under the Indian Companies Act, 1913, and that the applicant intends to assign the trade mark to that company with a view to the use thereof in relation to those goods by the company. VII of 1913.

(2) The tribunal may, in a case to which sub-section (1) applies, require the applicant to give security for the costs of any proceedings relative to any opposition or appeal, and in default of such security being duly given may treat the application as abandoned.

(3) Where in a case to which sub-section (1) applies, a trade mark in respect of any goods is registered in the name of an applicant who relies on intention to assign to a company, then, unless within such period as may be prescribed, or within such further period not exceeding six months as the Registrar may, on application being made to him in the prescribed manner, allow, the company has been registered as the proprietor of the trade mark in respect of those goods, the registration shall cease to have effect in respect thereof at the expiration of that period, and the Registrar shall amend the register accordingly.

Removal
from register
and imposi-
tion of limi-
tations on
ground of
non-use.

37. (1) Subject to the provisions of section 38, a registered trade mark may be taken off the register in respect of any of the goods in respect of which it is registered on application in the prescribed manner by any person aggrieved to a High Court or to the Registrar, on the ground either—

- (a) that the trade mark was registered without any *bona fide* intention on the part of the applicant for registration that it should be used in relation to those goods by him or, in a case to which the provisions of section 36 apply, by the company concerned, and that there has in fact been no *bona fide* use of the trade mark in relation to those goods by any proprietor thereof for the time being up to a date one month before the date of the application; or
- (b) that up to a date one month before the date of the application, a continuous period of five years or longer elapsed during which the trade mark was registered and during which there was no *bona fide* use thereof in relation to those goods by any proprietor thereof for the time being:

Provided that, except where the applicant has been permitted under sub-section (2) of section 10 to register an identical or nearly resembling trade mark in respect of the goods in question or where the tribunal is of opinion that he might properly be permitted so to register such a trade mark, the tribunal may refuse an application made under clause (a) or clause (b) in relation to any goods, if it is shown that there has

(Chapter VI.—Use of Trade Marks and Registered Users.)

been, before the relevant date or during the relevant period, as the case may be, *bona fide* use of the trade mark by any proprietor thereof for the time being in relation to goods of the same description, being goods in respect of which the trade mark is registered.

(2) Where in relation to any goods in respect of which a trade mark is registered—

(a) the circumstances referred to in clause (b) of sub-section (1) are shown to exist so far as regards non-use of the trade mark in relation to goods to be sold, or otherwise traded in, in a particular place in ¹[the Provinces] (otherwise than for export from ¹[the Provinces]), or in relation to goods to be exported to a particular market outside ¹[the Provinces], and

(b) a person has been permitted under sub-section (2) of section 10 to register an identical or nearly resembling trade mark in respect of those goods under a registration extending to use in relation to goods to be so sold, or otherwise traded in, or in relation to goods to be so exported, or the tribunal is of opinion that he might properly be permitted so to register such a trade mark,

on application by that person in the prescribed manner to a High Court or to the Registrar, the tribunal may impose on the registration of the first-mentioned trade mark such limitations as it thinks proper for securing that that registration shall cease to extend to such use.

(3) An applicant shall not be entitled to rely for the purpose of clause (b) of sub-section (1) or of sub-section (2) on any non-use of a trade mark which is shown to have been due to special circumstances in the trade and not to any intention to abandon or not to use the trade mark in relation to the goods to which the application relates.

38. (1) Where a trade mark consisting of any invented word has become so well-known as respects any goods in relation to which it is registered and has been used, that the use thereof in relation to other goods would be likely to be taken as indicating a connection in the course of trade between those goods and a person entitled to use the trade mark in relation to the first-mentioned goods, then, notwithstanding that the proprietor registered in respect of the first-mentioned goods does not use or propose to use the trade mark in relation to those other goods and notwithstanding anything in section 37, the trade mark may on application in the prescribed manner by such proprietor be registered in his name in respect of those other goods as a defensive trade mark and, while so registered, shall not be liable to be taken off the register in respect of those goods under the said section.

Defensive
registration
of well-
known trade
marks.

(2) The registered proprietor of a trade mark may apply for the registration thereof in respect of any goods as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods otherwise than as a defensive trade mark, or may apply for

¹ Subs. by the A. O. 1948 for "British India".

(Chapter VI.—Use of Trade Marks and Registered Users.)

the registration thereof in respect of any goods otherwise than as a defensive trade mark notwithstanding that it is already registered in his name in respect of those goods as a defensive trade mark, in lieu in each case of the existing registration.

(3) A trade mark registered as a defensive trade mark and that trade mark as otherwise registered in the name of the same proprietor shall, notwithstanding that the respective registrations are in respect of different goods, be deemed to be and shall be registered as, associated trade marks.

(4) On application in the prescribed manner by any person aggrieved to a High Court or to the Registrar, the registration of a trade mark as a defensive trade mark may be cancelled on the ground that the requirements of sub-section (7) are no longer satisfied in respect of any goods in relation to which the trade mark is registered in the name of the same proprietor otherwise than as a defensive trade mark, or may be cancelled as respects any goods in relation to which it is registered as a defensive trade mark on the ground that there is no longer any likelihood that the use of the trade mark in relation to those goods would be taken as giving the indication mentioned in sub-section (7).

(5) The Registrar may at any time cancel the registration as a defensive trade mark of a trade mark of which there is no longer any registration in the name of the same proprietor otherwise than as a defensive trade mark.

(6) Except as otherwise expressly provided in this section, the provisions of this Act shall apply in respect of the registration of trade marks as defensive trade marks and of trade marks so registered as they apply in other cases.

Registered users.

39. (1) A person other than the proprietor of a trade mark may be registered as a registered user thereof in respect of all or any of the goods in respect of which it is registered (otherwise than as a defensive trade mark) and either with or without conditions or restrictions.

(2) The permitted use of a trade mark shall be deemed to be used by the proprietor thereof, and shall be deemed not to be used by a person other than the proprietor, for any purpose for which such use is material under this Act or any other law.

Power of registered user to take proceedings against infringement.

40. (1) Subject to any agreement subsisting between the parties, a registered user of a trade mark shall be entitled to call upon the proprietor thereof to take proceedings to prevent infringement thereof, and if the proprietor refuses or neglects to do so within three months after being so called upon, the registered user may institute proceedings for infringement in his own name as if he were the proprietor, making the proprietor a defendant.

(2) Notwithstanding anything contained in any other law, a proprietor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(Chapter VI.—Use of Trade Marks and Registered Users.)

41. (1) Where it is proposed that a person should be registered as a registered user of a trade mark, the proprietor and the proposed registered user shall make application in writing to the Registrar in the prescribed manner accompanied by an affidavit made by the proprietor, or by some person authorised to the satisfaction of the Registrar to act on his behalf,—

- (a) giving particulars of the relationship, existing or proposed, between the proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restriction as to persons for whose registration as registered users application may be made;
- (b) stating the goods in respect of which registration is proposed;
- (c) stating any conditions or restrictions proposed with respect to the characteristics of the goods, to the mode or place of permitted use, or to any other matter;
- (d) stating whether the permitted use is to be for a period or without limit of period, and, if for a period, the duration thereof;

and by such further documents, information or evidence as may be required by the Registrar or as may be prescribed.

(2) When the requirements of sub-section (1) have been complied with, if the Registrar is satisfied that in all the circumstances the use of the trade mark in respect of the proposed goods or any of them by the proposed registered user subject to any conditions or restrictions which the Registrar may think proper, would not be contrary to the public interest, the Registrar may register, subject as aforesaid, the proposed registered user as a registered user in respect of the goods as to which he is so satisfied.

(3) The Registrar shall refuse an application under this section if it appears to him that the grant thereof would tend to facilitate trafficking in a trade mark.

(4) The Registrar shall, if so requested by an applicant, take steps for securing that information given for the purposes of an application under this section (other than matter entered in the register) is not disclosed to rivals in trade.

(5) The Registrar shall issue notice in the prescribed manner—

- (a) of the registration of a person as a registered user, to any other registered user of the trade mark;
- (b) of an application under section 42, to the registered proprietor, and each registered user (not being the applicant) of the trade mark.

(Chapter VI.—Use of Trade Marks and Registered Users.)

Power to Registrar to vary or cancel registration as registered user.

42. Without prejudice to the provisions of section 46, the registration of a person as a registered user—

- (a) may be varied by the Registrar as regards the goods in respect of which, or any conditions or restrictions subject to which, it has effect, on the application in writing in the prescribed manner of the registered proprietor of the trade mark,
- (b) may be cancelled by the Registrar on the application in writing in the prescribed manner of the registered proprietor or of the registered user or of any other registered user of the trade mark;
- (c) may be cancelled by the Registrar on the application in writing in the prescribed manner of any person on any of the following grounds, namely:—
 - (i) that the registered user has used the trade mark otherwise than by way of the permitted use, or in such a way as to cause or to be likely to cause, deception or confusion;
 - (ii) that the proprietor or the registered user misrepresented, or failed to disclose, some fact material to the application for the registration, or that the circumstances have materially changed since the date of the registration;
 - (iii) that the registration ought not to have been effected having regard to rights vested in the applicant by virtue of a contract in the performance of which he is interested;
- (d) may be cancelled by the Registrar in respect of any goods in relation to which the trade mark is no longer registered.

Registered user not to have right of assignment or transmission.

43. Nothing in this Act shall confer on a registered user of a trade mark any assignable or transmissible right to the use thereof.

Use of one of associated or substantially identical trade marks equivalent to use of another.

44. (1) Where under the provisions of this Act use of a registered trade mark is required to be proved for any purpose, the tribunal may, if and so far as it shall think right, accept use of a registered associated trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for the use required to be proved.

(2) The use of the whole of a registered trade mark shall for the purposes of this Act be deemed to be also a use of any trade mark being a part thereof and registered in accordance with sub-section (1) of section 11 in the name of the same proprietor.

(Chapter VI.—Use of Trade Marks and Registered Users.

Chapter VII.—Rectification and Correction of the Register.)

45. (1) The application in ¹~~[the Provinces]~~ of a trade mark to goods to be exported from ¹~~[the Provinces]~~ and any other act done in ¹~~[the Provinces]~~ in relation to goods to be so exported which, if done in relation to goods to be sold or otherwise traded in within ¹~~[the Provinces]~~ would constitute use of a trade mark therein, shall be deemed to constitute use of the trade mark in relation to those goods for any purpose for which such use is material under this Act or any other law.

Use of trade mark for export trade, and use when form of trade connection changes.

(2) The use of a registered trade mark in relation to goods between which and the person using the mark any form of connection in the course of trade subsists shall not be deemed to be likely to cause deception or confusion on the ground only that the mark has been or is used in relation to goods between which and the person using the mark or any predecessor in his business different form of connection in the course of trade subsisted or subsists.

CHAPTER VII.

RECTIFICATION AND CORRECTION OF THE REGISTER.

46. (1) On application in the prescribed manner by any person aggrieved to a High Court or to the Registrar, the tribunal may make such order as it may think fit for cancelling or varying the registration of a trade mark on the ground of any contravention of, or failure to observe a condition entered on the register in relation thereto.

Power to cancel or vary registration and to rectify the register.

(2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to a High Court or to the Registrar, and the tribunal may make such order for making, expunging or varying the entry as it may think fit.

²~~[Explanation.—For the purposes of sub-section (1) and this sub-section, a person who has registered a trade mark in any ³[Acceding State or other Indian State] to which section 32A for the time being applies, may be a person aggrieved.]~~

(3) The tribunal may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register.

(4) A High Court or the Registrar, of its or his own motion, may, after giving notice in the prescribed manner to the parties concerned

¹ Subs. by the A. O. 1948 for "British India".

² Ins. by s. 8 of the Trade Marks Amendment) Act, 1946 (12 of 1946).

³ Subs. for "Indian State" by S. 3., Sch. II of Act 40 of 1949.

(Chapter VII.—Rectification and Correction of the Register.)

and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).

(5) Any order of the Court rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

Correction of
register.

47. (1) The Registrar may, on application made in the prescribed manner by the registered proprietor,—

- (a) correct any error in the name, address or description of the registered proprietor of a trade mark;
- (b) enter any change in the name, address or description of the person who is registered as proprietor of a trade mark;
- (c) cancel the entry of a trade mark on the register;
- (d) strike out any goods or classes of goods from those in respect of which a trade mark is registered;
- (e) enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of the trade mark.

(2) The Registrar may, on application made in the prescribed manner by a registered user of a trade mark, correct any error, or enter any change, in the name, address or description of the registered user.

Alteration of
registered
trade mark.

48. (1) The registered proprietor of a trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter the trade mark in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.

(3) Where leave is granted under this section, the trade mark as altered shall be advertised in the prescribed manner, unless the application has already been advertised under sub-section (2).

Adaptation
of entries in
register to
amended or
substituted
classification
of goods.

49. (1) The Registrar shall not in exercise of any power conferred on him under clause (a) of sub-section (2) of section 84, make any amendment of the register which would have the effect of adding any goods or classes of goods to those in respect of which a trade mark is registered (whether in one or more classes) immediately before the

(Chapter VII.—Rectification and Correction of the Register.

Chapter VIII.—Certification Trade Marks.)

amendment is to be made or of antedating the registration of a trade mark in respect of any goods:

Provided that this sub-section shall not apply when the Registrar is satisfied that compliance therewith would involve undue complexity and that the addition or antedating, as the case may be, would not affect any substantial quantity of goods and would not substantially prejudice the rights of any person.

(2) A proposal so to amend the register shall be notified to the registered proprietor of the trade mark affected and advertised in the prescribed manner, and may be opposed before the Registrar by any person aggrieved on the ground that the proposed amendment contravenes the provisions of sub-section (1).

CHAPTER VIII.

CERTIFICATION TRADE MARKS.

50. Subject to the provisions of this Chapter, the other provisions of this Act except sections 6, 21, 22, 31, 32, 33, 36, 37, 38, 39, 40, 41, 42 and 43 and sub-section (2) of section 45 shall apply to certification trade marks as they apply to trade marks.

Provisions of this Act applicable to certification trade marks.

51. A mark shall not be registrable as a certification trade mark in the name of a person who carries on a trade in goods of the kind certified.

Certification trade mark not to be registered in name of person trading in goods certified thereby.

52. In determining whether a mark is adapted to distinguish in accordance with the provisions of clause (b) of sub-section (1) of section 2, the tribunal may have regard to the extent to which—

Determination whether a mark is a certification trade mark.

(a) the mark is inherently so adapted to distinguish in relation to the goods in question; and

(b) by reason of the use of the mark or of any other circumstances, the mark is in fact so adapted to distinguish in relation to the goods in question.

53. (1) An application for the registration of a mark as a certification trade mark shall be made to the Registrar ^{1 * * *} in writing in the prescribed manner by the person proposed to be registered as the proprietor thereof, and accompanied by a draft of the regulations to be deposited under section 56.

Application for registration.

(2) The provisions of section 14 shall have effect in relation to an application under this section as they have effect in relation to an

¹ The words "or the Bombay Registrar, as the case may be" which had been ins. by s. 3 of the Trade Marks (Amendment) Act, 1941 (27 of 1941) were rep. by s. 4 of the Trade Marks (Amendment) Act, 1943 (15 of 1943) (with effect from 5th June, 1943).

(Chapter VIII.—*Certification Trade Marks.*)

application under the said section, except that for references therein to acceptance of an application there shall be substituted references to authorisation to proceed with the application.

(3) In dealing under the said provisions with an application under this section, the tribunal shall have regard to the like considerations, so far as relevant, as if the application were an application under section 14 and to any other considerations (not being matters within the competence of the Central Government under section 54) relevant to applications under this section, including the desirability of securing that a certification trade mark shall comprise some indication that it is a certification trade mark.

Consideration of application for registration by Central Government.

54. When authorisation to proceed with an application under section 53 has been given, the Registrar shall forward the application to the Central Government who shall consider the application with regard to the following matters, namely:—

- (a) whether the applicant is competent to certify the goods in respect of which the mark is to be registered;
- (b) whether the draft of the regulations to be deposited under section 56 is satisfactory;
- (c) whether in all the circumstances the registration applied for would be to the public advantage;

and may either—

- (i) direct that the application shall not be accepted; or
- (ii) direct the Registrar to accept the application and approve the said draft of the regulations either without modification and unconditionally or subject to any conditions or limitations, or to any amendments or modification of the application or of the regulations, which it thinks requisite having regard to any of the said matters;

but, except in the case of a direction for acceptance and approval without modification and unconditionally, the Central Government shall not decide the matter without giving to the applicant an opportunity of being heard:

Provided that the Central Government may, at the request of the applicant made with the concurrence of the Registrar, consider the application with regard to any of the said matters before authorisation to proceed with the application has been given, so however that the Central Government shall be at liberty to reconsider any matter on which it has given a decision under this proviso if any amendment or modification is thereafter made in the application or in the draft of the regulations.

Opposition to registration.

55. (1) When an application has been accepted, the Registrar shall, as soon as may be thereafter, cause the application as accepted to be advertised in the prescribed manner, and the provisions of section

(Chapter VIII.—Certification Trade Marks.)

15 shall have effect in relation to the registration of the mark as if the application had been an application under section 14:

Provided that, in deciding under the said provisions the tribunal shall have regard only to the considerations referred to in sub-section (3) of section 53, and a decision under the said provisions in favour of the applicant shall be conditional on the determination in his favour by the Central Government under sub-section (2) of this section of any opposition relating to any of the matters referred to in section 54.

(2) When notice of opposition is given relating to any of the matters referred to in section 54, the Central Government shall, after hearing the parties, if so required, and considering any evidence, decide whether, and subject to what conditions or limitations, or amendments or modifications, if any, of the application or of the regulations to be deposited under section 56, registration is, having regard to those matters, to be permitted.

56. (1) There shall be deposited at the ¹[Trade Marks Registry] in respect of every mark registered as a certification trade mark regulations approved by the Central Government for governing the use thereof, which shall include provisions as to the cases in which the proprietor is to certify goods and to authorise the use of the certification trade mark, and may contain any other provisions which the Central Government may by general or special order require or permit to be inserted therein (including provisions conferring a right of appeal to the Registrar against any refusal of the proprietor to certify goods or to authorise the use of the certification trade mark in accordance with the regulations); and regulations so deposited shall be open to inspection in like manner as the register.

Deposit of regulations governing the use of a certification trade mark.

(2) The regulations so deposited may on the application of the registered proprietor be altered by the Registrar with the consent of the Central Government.

(3) The Central Government may cause such application to be advertised in any case where it appears to it expedient so to do, and where it does so, if within the time specified in the advertisement any person gives notice of opposition to the application, the Central Government shall not decide the matter without giving the parties an opportunity of being heard.

57. ²[(1)] Subject to the provisions of sections 25, 26 and 58, the registration of a person as proprietor of a certification trade mark in respect of any goods shall ³* * give to that person the exclusive right to the use of the certification trade mark in relation to those goods, and, without prejudice to the generality of the foregoing provision, that right shall be deemed to be infringed by any person who, not being the

Right conferred by registration.

¹ Subs. for "Patent Office" by s. 5 of the Trade Marks (Amendment) Act, 1943 (15 of 1943) (with effect from 5th June, 1943).

² S. 57 was re-numbered as sub-section (1) by s. 9 of the Trade Marks (Amendment) Act, 1946 (12 of 1946).

³ The words "if valid" were rep., *ibid.*

(Chapter VIII.—Certification Trade Marks.)

proprietor of the mark or a person authorised by him in that behalf under the regulations deposited under section 56, using it in accordance therewith, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to any goods in respect of which it is registered, and in such manner as to render the use of the mark likely to be taken either—

- (a) as being used as a certification trade mark; or
- (b) to import a reference to some person having the right either as proprietor, or by his authorisation under the said regulations, to use the mark, or to goods certified by the proprietor.

~~¹(2) A person registered in any ²Acceding State or other Indian State] to which section 82A for the time being applies, as proprietor of a certification trade mark shall have the same rights in respect thereof as are conferred by this section on a person registered under this Act as proprietor of a certification trade mark.]~~

No infringement in certain circumstances.

58. (1) The right to the use of a certification trade mark given under section 57 by registration shall be subject to any conditions or limitations entered on the register, and shall not be deemed to be infringed by the use of any such mark as aforesaid in any mode, in relation to goods to be sold or otherwise traded in in any place, in relation to goods to be exported to any market, or in any other circumstances, to which having regard to any such limitations, the registration does not extend.

(2) The said right to the use of a certification trade mark shall not be deemed to be infringed by the use of any such mark as aforesaid by any person—

- (a) in relation to goods certified by the proprietor of the mark if, as to those goods or a bulk of which they form part, the proprietor or another in accordance with his authorisation under the relevant regulations has applied the mark and has not subsequently removed or obliterated it, or the proprietor has at any time expressly or impliedly consented to the use of the mark, or
- (b) in relation to goods adapted to form part of, or to be accessory to, other goods in relation to which the mark has been used without infringement of the right given as aforesaid or might for the time being be so used, if the use of the mark is reasonably necessary in order to indicate that the goods are so adapted and neither the purpose nor the effect of the use of the mark is to indicate otherwise than in accordance with the fact that the goods are certified by the proprietor:

¹ Ins. by s. 9 of the Trade Marks (Amendment) Act, 1946 (12 of 1946).

² Subs. by the A. O. 1948 for "Indian State".

(Chapter VIII.—Certification Trade Marks.)

Provided that clause (a) shall not apply to the case of use consisting of the application of any such mark as aforesaid to any goods, notwithstanding that they are such goods as are mentioned in that clause if such application is contrary to the said regulations.

(3) Where a certification trade mark is one of two or more ¹[certification trade marks registered under this Act ~~or in any Acceding State or other Indian State to which section 82A for the time being applies.~~] which are identical or nearly resemble each other, the use of any of those marks in exercise of the right to use of that mark given by registration, shall not be deemed to be an infringement of the right so given to the use of any other of those marks.

59. (1) The Central Government may, on the application in the prescribed manner of any person aggrieved or on the recommendation of the Registrar, and after giving the proprietor an opportunity of opposing the application or recommendation, make such order as it thinks fit for expunging or varying any entry in the register relating to a certification trade mark, or for varying the deposited regulations, on any of the following grounds, namely:—

- (a) that the proprietor is no longer competent, in the case of any of the goods in respect of which the mark is registered, to certify those goods;
- (b) that the proprietor has failed to observe any provision of the deposited regulations to be observed on his part;
- (c) that it is no longer to the public advantage that the mark should be registered;
- (d) that it is requisite for the public advantage that, if the mark remains registered, the regulations should be varied;

and neither a High Court nor the Registrar shall have any jurisdiction to make an order under section 46 on any of those grounds.

(2) The Registrar shall rectify the register and the deposited regulations in such manner as may be requisite for giving effect to an order made under sub-section (1).

60. The Registrar shall have no power to award costs to or against any party on an appeal to him against a refusal of the proprietor of a certification trade mark to certify goods or to authorise the use of the mark.

Costs not to be awarded in certain cases.

61. Save as otherwise expressly provided in this Chapter, every decision of the Central Government under this Chapter shall be final.

Decisions of Central Government to be final.

¹ Subs. for "registered certification trade marks" by s. 10 of the Trade Marks (Amendment) Act, 1946 (12 of 1946).

² Subs. for "Indian State" by S. 3, Sch. II, Act 40 of 1949.

(Chapter IX.—Special Provisions for Textile Goods.)

CHAPTER IX.

SPECIAL PROVISIONS FOR TEXTILE GOODS.

Textile
goods.

62. The Central Government shall prescribe classes of goods (in this Chapter referred to as textile goods) to the trade marks used in relation to which the provisions of this Chapter shall apply; and subject to the said provisions, the other provisions of this Act shall apply to such trade marks as they apply to trade marks used in relation to other classes of goods.

63. [*Separate Trade Marks Registry at Bombay.*—Rep. by s. 6 of the Trade Marks (Amendment) Act, 1943 (XV of 1943).]

63A. [*Jurisdiction of Bombay Registrar and Registrar in respect of trade marks used in relation to textile goods.*—Rep. by *ibid.*]

Restriction
on registra-
tion of
textile goods

[64. (1) In respect of textile goods being piece goods—

- (a) no mark consisting of a line heading alone shall be registrable as a trade mark;
- (b) a line heading shall not be deemed to be adapted to distinguish;
- (c) the registration of a trade mark shall not give any exclusive right to the use of a line heading.

(2) In respect of any textile goods, the registration of letters or numerals, or any combination thereof, shall be subject to such conditions and restrictions as may be prescribed.]

Refused
Textile
Marks List.

[65. Trade marks in respect of textile goods of which registration has been refused shall be entered by the Registrar in a list called the Refused Textile Marks List, and the said list shall at all convenient times be open to the inspection of the public subject to such conditions and restrictions as may be prescribed.]

Advisory
Committees.

66. (1) The Central Government may in the prescribed manner constitute one or more Advisory Committees of persons versed in the usages of the textile trade for the purpose of this section.

¹ Subs. by s. 7 of the Trade Marks (Amendment) Act, 1943 (15 of 1943) (with effect from 5th June, 1943) for the original section.

² Subs. by s. 8, *ibid.*, for s. 65 which had been subs. by s. 5 of the Trade Marks (Amendment) Act, 1941 (27 of 1941) for the original section.

(Chapter IX.—Special Provisions for Textile Goods.)
(Chapter X.—Offences and Restraint of Use of Royal Arms and
State Emblems.)

(2) The Registrar ¹ * * * shall consult any such Committee with respect to any circumstances peculiar to the textile trade arising on an application to register a trade mark in respect of textile goods.

(3) The place of meeting and the conduct of business of such Committees shall be determined by rules made under this Act.

CHAPTER X.

OFFENCES AND RESTRAINT OF USE OF ROYAL ARMS AND STATE EMBLEMS.

67. If any person makes, or causes to be made a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or produces or tenders, or causes to be produced or tendered, in evidence any such writing, knowing the entry or writing to be false, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Penalty for falsification of entries in register.

68. (1) ²[On and after the 1st day of January, 1947,] no person shall make any representation—

Penalty for falsely representing a trade mark as registered.

(a) with respect to a mark not being a registered trade mark to the effect that it is a registered trade mark ; or

(b) with respect to a part of a registered trade mark not being a part separately registered as a trade mark, to the effect that it is separately registered as a trade mark ; or

(c) to the effect that a registered trade mark is registered in respect of any goods in respect of which it is not in fact registered ; or

(d) to the effect that the registration of a trade mark gives an exclusive right to the use thereof in any circumstances in which, having regard to limitations entered on the register, the registration does not in fact give that right.

(2) If any person contravenes any of the provisions of sub-section (1); he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(3) For the purposes of this section, the use in ³[the ~~Provinces~~ ^{India}] in relation to a trade mark of the word “registered”, or of any other ex-

¹ The words “and the Bombay” which had been subs. by s. 6 of the Trade Marks (Amendment) Act, 1941 (27 of 1941) for the words “or the Deputy” and the word “Registrar” were rep. by s. 9 of the Trade Marks (Amendment) Act, 1943 (15 of 1943) (with effect from 5th June, 1943).

² Subs. for “From such date, not being earlier than one year from the commencement of this Act, as the Central Government may, by notification in the Official Gazette, appoint in this behalf”, by s. 11 of the Trade Marks (Amendment) Act, 1946 (12 of 1946).

³ Subs. by the A. O. 1948 for “British India”.

(Chapter X.—Offences and Restraint of Use of Royal Arms and States Emblems.)

pression referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register, except—

(a) where that word or other expression is used in direct association with other words delineated in characters at least as large as those in which that word or other expression is delineated and indicating that the reference is to registration as a trade mark under the law of ¹[of an ~~Acceding State or of~~ a country outside India] being a country under the law of which the registration referred to is in fact in force; or

(b) where that other expression is of itself such as to indicate that the reference is to such registration as is mentioned in clause (a); or

(c) where that word is used in relation to a mark registered as a trade mark under the law of ²[an ~~Acceding State or of~~ a country outside India] and in relation solely to goods to be exported to that country.

³(4) Nothing in this section shall—

(a) apply to a trade mark, application for the registration of which has been made before the 1st day of January 1947, until such application has been disposed of;

(b) affect the use of the word “registered” in respect of a trade mark registered in any ⁴[~~Acceding State or other Indian State~~] to which section 82A for the time being applies, or until the application has been disposed of, in respect of a trade mark, application for the registration of which has been made in any such ⁴[~~Acceding State or other Indian State~~] before the aforesaid date.

Restraint
of use of
Royal Arms
and State
emblems.

69. If a person, without due authority, uses in connection with any trade, business, calling or profession—

(a) the Royal Arms ^{or arms so closely resembling the same as to be calculated to deceive} (or arms so closely resembling the same as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or ~~Government Arms~~, or

(b) any device, emblem or title in such manner as to be calculated to lead to the belief that he is employed by, or supplies goods to, or is connected with, His Majesty's Government or the Central Government or any Provincial Government or any department of any such Government,

he may, at the suit of any person who is authorised to use such Arms or such device, emblem or title or of the Registrar, ⁵* * * be restrained by injunction from continuing so to use the same:

¹ Subs. by S. 3., & Sch. II, Act 40 of 1949 for certain words,

² Subs. by the A. O. 1948 for “a country outside British India”.

³ Ins. by s. 11 of the Trade Marks (Amendment) Act, 1946 (12 of 1946).

⁴ Subs. by the A. O. 1948 for “Indian State”.

⁵ The words “or the Bombay Registrar” which had been ins. by s. 7 of the Trade Marks (Amendment) Act, 1941 (27 of 1941) were rep. by s. 10 of the Trade Marks (Amendment) Act, 1943 (15 of 1943) (with effect from 5th June, 1943).

(Chapter X.—*Offences and Restraint of Use of Royal Arms and State Emblems.* Chapter XI.—*Miscellaneous.*)

¹[Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such Arms, device emblem or title to continue to use such trade mark.]

CHAPTER XI.

MISCELLANEOUS.

70. In all proceedings under this Act before the Registrar—

Procedure
before the
Registrar.

- (a) the Registrar shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses;
- (b) evidence shall be given by affidavit, provided that the Registrar may, if he thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit;
- (c) the Registrar shall not exercise any power vested in him by this Act or the rules made thereunder adversely to any party duly appearing before him without (if required in writing within the prescribed time so to do) giving such party an opportunity of being heard;
- (d) the Registrar may, save as otherwise expressly provided in this Act, and subject to any rules made in this behalf under section 84, make such orders as to costs as he considers reasonable, and any such order shall be executable as a decree of a Civil Court.

71. In all proceedings under this Act before the Central Government, evidence shall be given by affidavit, provided that the Central Government may, if it thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit, and shall for that purpose have all the powers of a Civil Court referred to in clause (a) of section 70.

Procedure
before
Central
Government.

72. Where under this Act an applicant has the option of making an application either to a High Court or to the Registrar,—

Procedure in
certain cases
of option to
apply to a
High Court
or the
Registrar.

- (a) if any suit or other proceedings concerning the trade mark in question is pending before a High Court or a District Court, the application shall be made to that High Court or, as the case may be, to the High Court within whose jurisdiction that District Court is situated;
- (b) if in any other case the application is made to the Registrar, the Registrar may, if he thinks fit, refer the application at any stage of the proceedings to a High Court.

¹ Ins. by s. 11 of the Trade Marks (Amendment) Act, 1946 (12 of 1946).

(Chapter XI.—Miscellaneous.)

Suits for infringement to be instituted before District Court.

73. No suit for the infringement of a trade mark or otherwise relating to any right in a trade mark shall be instituted in any Court inferior to a District Court having jurisdiction to try the suit.

Appearance of Registrar in proceedings involving rectification of register.

74. (1) In any suit or other legal proceedings in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the tribunal.

(2) Unless the tribunal otherwise directs, the Registrar may, in lieu of appearing, submit a statement in writing signed by him, giving such particulars as he thinks proper of the proceedings before him relating to the matter in issue, or of the grounds of any decision given by him affecting it, or of the practice of the ¹[Trade Marks Registry] in like cases, or of other matters relevant to the issues and within his knowledge as Registrar, and such statement shall be evidence in the suit or other proceeding.

* * * * *

Costs of Registrar in proceedings before High Court.

³[74A. In all proceedings under this Act before a High Court the costs of the Registrar shall be in the discretion of the High Court, but the Registrar shall not be ordered to pay the costs of any of the parties.]

Evidence of entries in register and things done by Registrar.

75. (1) A printed or written copy of any entry in the register, purporting to be certified by the Registrar and sealed with the seal of the ⁴[Trade Marks Registry], shall be admitted in evidence in all Courts in ~~the Province~~ and in all proceedings without further ⁶[proof or production] of the original.

(2) A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorised by this Act or the rules to make or do shall be *prima facie* evidence of the entry having been made, and of the contents thereof, or of the matter or thing having been done or not done.

Appeals.

76. (1) Save as otherwise expressly provided in this Act, an appeal shall lie, within the period prescribed by the Central Government, from any decision of the Registrar * * * under this Act or the rules made thereunder to the High Court having jurisdiction:

Provided that if any suit or other proceeding concerning the trade mark in question is pending before a High Court or a District Court,

¹ Subs. for "Patent Office" by s. 11 of the Trade Marks (Amendment) Act, 1943 (15 of 1943) (with effect from 5th June, 1943).

² Sub-section (3) rep., *ibid.* (with effect from 5th June, 1943).

³ Ins. by s. 12. *ibid.* (with effect from 5th June, 1943).

⁴ Subs. by s. 13, *ibid.* for "Patent Office" (with effect from 5th June, 1943).

⁵ Subs. by the A. O. 1948 for "British India".

⁶ Subs. for "proof of production" by s. 8 of the Trade Marks (Amendment) Act, 1941 (27 of 1941).

⁷ The words "or the Bombay" which had been subs. for the words "or Deputy" by s. 9 of Act 27 of 1941 and the word "Registrar" were rep. by s. 14 of Act 15 of 1943 (with effect from 5th June, 1943).

(Chapter XI.—Miscellaneous.)

the appeal shall be made to that High Court or, as the case may be, to the High Court within whose jurisdiction that District Court is situated.

(2) In an appeal by an applicant for registration against a decision of the Registrar under section 13 or section 14 or section 15, it shall not be open, save with the express permission of the Court, to the Registrar or any party opposing the appeal to advance grounds other than those recorded in the said decision or advanced by the party in the proceedings before the Registrar, as the case may be; and where any such additional grounds are advanced, the applicant for registration may, on giving notice in the prescribed manner, withdraw his application without being liable to pay the costs of the Registrar or the parties opposing his application.

V of 1908. (3) Subject to the provisions of this Act and of rules made thereunder, the provisions of the Code of Civil Procedure, 1908, shall apply to appeals before a High Court under this Act.

77. A High Court may make rules consistent with this Act as to the conduct and procedure of all proceedings under this Act before it.

Power of High Courts to make rules.

78. If in any legal proceeding in which the validity of the registration of a trade mark comes into question, a decision is given in favour of the proprietor of the trade mark, the tribunal may grant a certificate to that effect, and if such a certificate is granted, then in any subsequent legal proceeding in which the said validity comes into question, the said proprietor on obtaining a final order or judgment in his favour shall, unless the said final order or judgment for sufficient reason directs otherwise, be entitled to his full costs, charges and expenses as between legal practitioner and client.

Certificate of validity.

79. In any suit or other proceeding relating to a trade mark, the tribunal shall admit evidence of the usages of the trade concerned and of any relevant trade mark or get up legitimately used by other persons.

Trade usage, etc., to be taken into consideration.

80. Where by or under this Act any act, other than the making of an affidavit, is required to be done by any person, the act may, subject to prescribed conditions or in special cases with the consent of the Central Government, be done, in lieu of by that person himself, by a duly authorised agent, being either a legal practitioner or a person registered in the prescribed manner as a trade marks agent.

Agents.

81. There shall be paid in respect of applications and registration and other matters under this Act such fees as may be prescribed by the Central Government.

Fees.

82. The provisions of this Act shall be binding on the Crown.

Crown to be bound.

(Chapter XI.—Miscellaneous.)

Power to make reciprocal arrangements with Acceding State or other Indian State.

~~482A] (1) The Central Government may enter into reciprocal arrangements with any ²[Acceding State or other Indian State] whereby trade marks and certification trade marks registered under this Act shall have in that State protection as if registered in that State and where such arrangements have been entered into with any ²[Acceding State or other Indian State], the Central Government shall by notification in the official Gazette declare that this section shall ³apply to that State.~~

~~(2) Where any such arrangements as aforesaid with any ²[Acceding State or other Indian State] are terminated, the Central Government shall by a further like notification cancel the notification under sub-section (1) relating to that State.]~~

Power to make reciprocal arrangements with other Governments.

83. If at any time after the expiry of six months from the commencement of this section it is made to appear to the Central Government that any Government outside ^{4*} India has made satisfactory provision for the protection within its territories of trade marks in respect of which an application for registration has been made in ⁵~~[the Provinces]~~ the Central Government may, by notification in the official Gazette, make provision with regard to trade marks in respect of which an application for registration has been made within the territories of that Government to enable any person who has applied within such territories for registration of a trade mark or his legal representative or assignee to obtain registration of the trade mark in ⁶~~[the Provinces]~~ under this Act on his making an application for registration in ⁵~~[the Provinces]~~ within such period as may be fixed in this behalf by the notification as if an application for registration under this Act had been made in respect of that trade mark at the date at which the application for registration was made within the territories of that Government.

Power of Central Government to make rules.

84. (1) The Central Government may, subject to the condition of previous publication by notification in the official Gazette, make ⁶rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe the classification of goods for the purpose of the registration of trade marks, and empower the Registrar to amend the register so far as may be necessary for the purpose of adapting the entries therein to any amended or substituted classification which may be prescribed;

(b) require the making of duplicates of trade marks and other documents connected therewith;

¹ Ins. by s. 12 of the Trade Marks (Amendment) Act, 1946 (12 of 1946).

² Subs. by the A. O. 1948 for "Indian State".

³ Applied to the States of Cochin, Travancore, Baroda, Kolhapur, Mysore and Hyderabad (Deccan), see Gazette of India, 1946, Pt. 1, pp. 1567, 1685, and *ibid.* 1947, Pt. I, pp. 38, 1161 and 1300, respectively.

⁴ The word "British" was rep. by s. 13 of Act 12 of 1946.

⁵ Subs. by the A. O. 1948 for "British India".

⁶ For the Trade Marks Rules, 1942, see Gen. R. & O. Supplementary Vol. VIII, p. 132, or Gazette of India, 1942, Extraordinary, p. 613.

(Chapter XI.—Miscellaneous.)

- (c) provide for securing and regulating the publication, sale or distribution of copies of trade marks and other documents connected therewith;
- (d) prescribe additional matters to be entered in the register,
- (e) prescribe the conditions and restrictions subject to which the register, ¹* * and the Refused Textile Marks ²[List] may be inspected;
- (f) prescribe the form of certificates of registration;
- (g) prescribe the conditions under which a trade mark removed from the register may be restored under sub-section (3) of section 18;
- (h) prescribe the further documents, information or evidence to accompany an application under sub-section (1) of section 41;
- (i) prescribe classes of goods as textile goods for the purposes of Chapter IX;
- (j) provide for the constitution of Advisory Committees referred to in section 66, and prescribe the places of meeting, and conduct of business at meetings, of such Committees;
- (k) regulate the awarding of costs by the Registrar under section 70;
- (l) prescribe the conditions subject to which an agent referred to in section 80 may act;
- ³[(m) make such supplementary provision as may be necessary or expedient to give effect to reciprocal arrangements entered into with ⁴[Acceding States or other Indian States] under section 82A;]
- (m) prescribe the fees to be paid under this Act;
- (n) provide for the establishment of branches of the Trade Marks Registry when expedient for facilitating the working of this Act, and authorise the preparation of copies of the register to be kept at such branch offices;
- (o) prescribe the manner in which, in proceedings under this Act before the Central Government or the Registrar, applications shall be made, notices given and matters advertised;

¹ The word "Records" which had been subs. for the words "the Textile Marks Record" by s. 10 of the Trade Marks (Amendment) Act, 1941 (27 of 1941) was rep. by s. 15 of the Trade Marks (Amendment) Act, 1943 (15 of 1943) (with effect from 5th June, 1943).

² Subs. by s. 15 of Act 15 of 1943 (with effect from 5th June, 1943) for "Lists" which been subs. for "List" by s. 10 of Act 27 of 1941.

³ Ins. by s. 14 of the Trade Marks (Amendment) Act, 1946 (12 of 1946).

⁴ Subs. by the A. O. 1948 for "Indian States".

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(Chapter XI.—Miscellaneous.)

- (p) prescribe times or periods required by this Act to be prescribed;
- (q) provide, generally, for regulating the business of the Trade Marks Registry and of branches established under clause (n)¹ * * *, and for regulating all things by this Act placed under the direction or control of the Central Government or the Registrar.

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Power to Central Government to make provision for applications for registration before the coming into force of the remaining provisions of Act.

85. The Central Government may, by notification in the official Gazette, provide such procedure as it considers expedient to enable intending applicants to deposit trade marks at the Patent Office before the coming into force of the remaining provisions of this Act:

Provided that the deposit of a trade mark under this section shall not affect any right, existing or accruing, in the trade mark.

Proceedings at Patent Office and the Bombay Registry to be deemed to have been taken at Trade Marks Registry.

[86. On the commencement of the Trade Marks (Amendment) Act, 1943, all applications made and all acts done under this Act before that time at the Patent Office or the Bombay Registry shall be deemed to have been made and done at the Trade Marks Registry, Bombay, and shall have effect as if made or done under this Act as amended by the Trade Marks (Amendment) Act, 1943.]

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XV

¹ The words "or under section 63" were rep. by s. 10 of the Trade Mark (Amendment) Act, 1941 (27 of 1941).

² Clause (r) which had been ins. *ibid.*, was rep. by s. 15 of the Trade Marks (Amendment) Act, 1943 (15 of 1943) (with effect from 5th June, 1943).

³ For such notification, see Gen. R. & O. Supplementary Vol. VIII, p. 198 or Gazette of India, 1940, Pt. I, p. 997.

⁴ Ins. by s. 16 of Act 15 of 1943 (with effect from 5th June, 1943).

THE ARBITRATION ACT, 1940.

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ACT No. X of 1940.¹

[11th March, 1940.]

An Act to consolidate and amend the law relating to
Arbitration.

WHEREAS it is expedient to consolidate and amend the law relating to arbitration in ^{the} Provinces;

It is hereby enacted as follows:—

CHAPTER I.

INTRODUCTORY.

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Arbitration Act, 1940.
- (2) It extends to ¹³⁵¹all the ¹³⁵²Provinces of India, ~~except the state of~~ ^{Jammu & Kashmir}.
- (3) It shall come into force on the 1st day of July, 1940.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

- (a) “arbitration agreement” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not;
- (b) “award” means an arbitration award;
- (c) “Court” means a Civil Court having jurisdiction to decide the questions forming the subject-matter of the reference if the same had been the subject-matter of a suit, but does not, except for the purpose of arbitration proceedings under section 21, include a Small Cause Court;

¹ For the Statement of Objects and Reasons, *see* Gazette of India, 1939, Pt. V, p. 142; for the Report of the Select Committee, *see* *ibid*, 1940, Pt. V, p. 35.

This Act has been applied to—

the whole of Chota Nagpur Division (excluding certain areas), except s. 1 (3), by Bihar Government Notification No. 1088 A-15/40-J.R., dated 31st August, 1940; the Darjeeling district, subject to certain modifications, by the late Bengal Government Notification No. 240-J., dated the 22nd January, 1941.

² Subs. by the A.O. 1948 for “British India”.

³ Subs. by the A. O. 1948 for “the whole of British India”.

(Chapter I.—Introductory. Chapter II.—Arbitration without Intervention of a Court.)

(d) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;

(e) "reference" means a reference to arbitration.

CHAPTER II.

ARBITRATION WITHOUT INTERVENTION OF A COURT.

3. An arbitration agreement, unless a different intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule in so far as they are applicable to the reference.

Provisions implied in arbitration agreement.

4. The parties to an arbitration agreement may agree that any reference thereunder shall be to an arbitrator or arbitrators to be appointed by a person designated in the agreement either by name or as the holder for the time being of any office or appointment.

Agreement that arbitrators be appointed by the third party.

5. The authority of an appointed arbitrator or umpire shall not be revocable except with the leave of the Court, unless a contrary intention is expressed in the arbitration agreement.

Authority appointed arbitrator or umpire irrevocable except by leave of Court.

6. (1) An arbitration agreement shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

Arbitration agreement not to be discharged by death of party thereto

(2) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.

(3) Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

7. (1) Where it is provided by a term in a contract to which an insolvent is a party that any differences arising thereout or in connection therewith shall be referred to arbitration, the said term shall, if the receiver adopts the contract, be enforceable by or against him so far as it relates to any such differences.

Provisions case of insolvency.

(2) Where a person who has been adjudged an insolvent had, before the commencement of the insolvency proceedings, become a party to an arbitration agreement, and any matter to which the agreement applies is required to be determined in connection with, or for the purposes of,

(Chapter II.—Arbitration without Intervention of a Court.)

the insolvency proceedings, then, if the case is one to which sub-section (1) does not apply, any other party to the agreement or the receiver may apply to the Court having jurisdiction in the insolvency proceedings for an order directing that the matter in question shall be referred to arbitration in accordance with the agreement, and the Court may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.

(3) In this section the expression "receiver" includes an Official Assignee.

Power of
Court to
appoint
arbitrator or
umpire.

8. (1) In any of the following cases—

(a) where an arbitration agreement provides that the reference shall be to one or more arbitrators to be appointed by consent of the parties, and all the parties do not, after differences have arisen, concur in the appointment or appointments; or

(b) if any appointed arbitrator or umpire neglects or refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied, and the parties or the arbitrators, as the case may be, do not supply the vacancy;
or

(c) where the parties or the arbitrators are required to appoint an umpire and do not appoint him;

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to concur in the appointment or appointments or in supplying the vacancy.

(2) If the appointment is not made within fifteen clear days after the service of the said notice, the Court may, on the application of the party who gave the notice and after giving the other parties an opportunity of being heard, appoint an arbitrator or arbitrators or umpire, as the case may be, who shall have like power to act in the reference and to make an award as if he or they had been appointed by consent of all parties.

Power to party to appoint new arbitrator or in certain cases, a sole arbitrator.

9. Where an arbitration agreement provides that a reference shall be to two arbitrators, one to be appointed by each party, then, unless a different intention is expressed in the agreement,—

(a) if either of the appointed arbitrators neglects or refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;

(b) If one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for fifteen clear days after the service by the other party of a notice in writing to make the appointment, such other party having

(Chapter II.—Arbitration without Intervention of a Court.)

appointed his arbitrator before giving the notice, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent;

Provided that the Court may set aside any appointment as sole arbitrator made under clause (b) and either, on sufficient cause being shown, allow further time to the defaulting party to appoint an arbitrator or pass such other order as it thinks fit.

Explanation.—The fact that an arbitrator or umpire, after a request by either party to enter on and proceed with the reference, does not within one month comply with the request may constitute a neglect or refusal to act within the meaning of section 8 and this section.

10. (1) Where an arbitration agreement provides that a reference shall be to three arbitrators, one to be appointed by each party and the third by the two appointed arbitrators, the agreement shall have effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the two arbitrators appointed by the parties.

Provisions as to appointment of three or more arbitrators.

(2) Where an arbitration agreement provides that a reference shall be to three arbitrators to be appointed otherwise than as mentioned in sub-section (1), the award of the majority shall, unless the arbitration agreement otherwise provides, prevail.

(3) Where an arbitration agreement provides for the appointment of more arbitrators than three, the award of the majority, or if the arbitrators are equally divided in their opinions, the award of the umpire shall, unless the arbitration agreement otherwise provides, prevail.

11. (1) The Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award.

Power to Court to remove arbitrators or umpire in certain circumstances.

(2) The Court may remove an arbitrator or umpire who has misconducted himself or the proceedings.

(3) Where an arbitrator or umpire is removed under this section, he shall not be entitled to receive any remuneration in respect of his services.

(4) For the purposes of this section the expression "proceeding with the reference" includes, in a case where reference to the umpire becomes necessary, giving notice of that fact to the parties and to the umpire

12. (1) Where the Court removes an umpire who has not entered on the reference or one or more arbitrators (not being all the arbitrators), the Court may, on the application of any party to the arbitration agreement, appoint persons to fill the vacancies.

Power of Court where arbitrator is removed or his authority revoked.

(Chapter II.—Arbitration without Intervention of a Court.)

(2) Where the authority of an arbitrator or arbitrators or an umpire is revoked by leave of the Court, or where the Court removes an umpire who has entered on the reference or a sole arbitrator or all the arbitrators, the Court may, on the application of any party to the arbitration agreement, either—

- (a) appoint a person to act as sole arbitrator in the place of the person or persons displaced, or
- (b) order that the arbitration agreement shall cease to have effect with respect to the difference referred.

(3) A person appointed under this section as an arbitrator or umpire shall have the like power to act in the reference and to make an award as if he had been appointed in accordance with the arbitration agreement.

Powers of
arbitrator.

13. The arbitrators or umpire shall, unless a different intention is expressed in the agreement, have power to—

- (a) administer oath to the parties and witnesses appearing;
- (b) state a special case for the opinion of the Court on any question of law involved, or state the award, wholly or in part, in the form of a special case of such question for the opinion of the Court;
- (c) make the award conditional or in the alternative;
- (d) correct in an award any clerical mistake or error arising from any accidental slip or omission;
- (e) administer to any party to the arbitration such interrogatories as may, in the opinion of the arbitrators or umpire, be necessary.

Award to be
signed and
filed.

14. (1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.

(3) Where the arbitrators or umpire state a special case under clause (b) of section 13, the Court, after giving notice to the parties and hearing them, shall pronounce its opinion thereon and such opinion shall be added to, and shall form part of, the award.

(Chapter II.—Arbitration without Intervention of a Court.)

15. The Court may by order modify or correct an award—

Power of
Court to
modify
award.

- (a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or
- (b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or
- (c) where the award contains a clerical mistake or an error arising from an accidental slip or omission.

16. (1) The Court may from time to time remit the award or any matter referred to arbitration to the arbitrators or umpire for reconsideration upon such terms as it thinks fit—

Power to
remit award.

- (a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration and such matter cannot be separated without affecting the determination of the matters referred; or
- (b) where the award is so indefinite as to be incapable of execution; or
- (c) where an objection to the legality of the award is apparent upon the face of it.

(2) Where an award is remitted under sub-section (1) the Court shall fix the time within which the arbitrator or umpire shall submit his decision to the Court:

Provided that any time so fixed may be extended by subsequent order of the Court.

(3) An award remitted under sub-section (1) shall become void on the failure of the arbitrator or umpire to reconsider it and submit his decision within the time fixed.

17. Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award.

Judgment in
terms of
award.

18. (1) Notwithstanding anything contained in section 17, at any time after the filing of the award, whether notice of the filing has been served or not, upon being satisfied by affidavit or otherwise that a party has taken or is about to take steps to defeat, delay or obstruct the execution of any decree that may be passed upon the award, or that

Power of
Court to pass
interim or-
ders.

*(Chapter II.—Arbitration without Intervention of a Court.
Chapter III.—Arbitration with Intervention of a Court where
there is no suit pending.)*

speedy execution of the award is just and necessary, the Court may pass such interim orders as it deems necessary.

(2) Any person against whom such interim orders have been passed may show cause against such orders, and the Court, after hearing the parties, may pass such further orders as it deems necessary and just.

Power to
supersede
arbitration
where award
becomes void
or is set
aside.

19. Where an award has become void under sub-section (3) of section 16 or has been set aside, the Court may by order supersede the reference and shall thereupon order that the arbitration agreement shall cease to have effect with respect to the difference referred.

CHAPTER III.

ARBITRATION WITH INTERVENTION OF A COURT WHERE THERE IS NO SUIT PENDING.

Application
to file in
Court arbi-
tration
agreement.

20. (1) Where any persons have entered into an arbitration agreement before the institution of any suit with respect to the subject-matter of the agreement or any part of it, and where a difference has arisen to which the agreement applies, they or any of them, instead of proceeding under Chapter II, may apply to a Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court.

(2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs and the remainder as defendant or defendants, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

(3) On such application being made, the Court shall direct notice thereof to be given to all parties to the agreement other than the applicants, requiring them to show cause within the time specified in the notice why the agreement should not be filed.

(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed by the parties, whether in the agreement or otherwise, or, where the parties cannot agree upon an arbitrator, to an arbitrator appointed by the Court.

(5) Thereafter the arbitration shall proceed in accordance with, and shall be governed by, the other provisions of this Act so far as they can be made applicable.

(Chapter IV.—Arbitration in suits. Chapter V.—General.)

CHAPTER IV.

ARBITRATION IN SUITS.

21. Where in any suit all the parties interested agree that any matter in difference between them in the suit shall be referred to arbitration, they may at any time before judgment is pronounced apply in writing to the Court for an order of reference. Parties to suit may apply for order of reference.
22. The arbitrator shall be appointed in such manner as may be agreed upon between the parties. Appointment of arbitrator.
23. (1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall in the order specify such time as it thinks reasonable for the making of the award. Order of reference.
- (2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this Act, deal with such matter in the suit.
24. Where some only of the parties to a suit apply to have the matters in difference between them referred to arbitration in accordance with, and in the manner provided by, section 21, the Court may, if it thinks fit, so refer such matters to arbitration (provided that the same can be separated from the rest of the subject-matter of the suit) in the manner provided in that section, but the suit shall continue so far as it relates to the parties who have not joined in the said application and to matters not contained in the said reference as if no such application had been made, and an award made in pursuance of such a reference shall be binding only on the parties who have joined in the application. Reference to arbitration by some of the parties.
25. The provisions of the other Chapters shall, so far as they can be made applicable, apply to arbitration under this Chapter: Provisions applicable to arbitrations under this Chapter.
- Provided that the Court may, in any of the circumstances mentioned in sections 8, 10, 11 and 12, instead of filling up the vacancies or making the appointments, make an order superseding the arbitration and proceed with the suit, and where the Court makes an order superseding the arbitration under section 19, it shall proceed with the suit.

CHAPTER V.

GENERAL.

26. Save as otherwise provided in this Act, the provisions of this Chapter shall apply to all arbitrations. Application of Chapter.

(Chapter V.—General.)

Power of arbitrators to make an interim award.

27. (1) Unless a different intention appears in the arbitration agreement, the arbitrators or umpire may, if they think fit, make an interim award.

(2) All references in this Act to an award shall include references to an interim award made under sub-section (1).

Power to Court only to enlarge time for making award.

28. (1) The Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time the time for making the award.

(2) Any provision in an arbitration agreement whereby the arbitrators or umpire may, except with the consent of all the parties to the agreement, enlarge the time for making the award, shall be void and of no effect.

Interest on awards.

29. Where and in so far as an award is for the payment of money the Court may in the decree order interest, from the date of the decree at such rate as the Court deems reasonable, to be paid on the principal sum as adjudged by the award and confirmed by the decree.

Grounds for setting aside award.

30. An award shall not be set aside except on one or more of the following grounds, namely:—

- (a) that an arbitrator or umpire has misconducted himself or the proceedings;
- (b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under section 35;
- (c) that an award has been improperly procured or is otherwise invalid.

Jurisdiction.

31. (1) Subject to the provisions of this Act, an award may be filed in any Court having jurisdiction in the matter to which the reference relates.

(2) Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all questions regarding the validity, effect or existence of an award or an arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the Court in which the award under the agreement has been, or may be, filed, and by no other Court.

(3) All applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the Court where the award has been, or may be, filed, and to no other Court.

(4) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where in any reference any application under this Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that Court and in no other Court.

(Chapter V.—General.)

32. Notwithstanding any law for the time being in force, no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be set aside, amended, modified or in any way affected otherwise than as provided in this Act.

Bar to suit
contesting
arbitration
agreement
or award.

33. Any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the Court and the Court shall decide the question on affidavits.

Arbitration
agreement
or award to
be contested
by applica-
tion.

Provided that where the Court deems it just and expedient, it may set down the application for hearing on other evidence also, and it may pass such orders for discovery and particulars as it may do in a suit.

34. Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time before filing a written statement or taking any other steps in the proceedings, apply to the judicial authority before which the proceedings are pending to stay the proceedings; and if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, such authority may make an order staying the proceedings.

Power to
stay legal
proceedings
where there
is an arbitra-
tion agree-
ment.

35. (1) No reference nor award shall be rendered invalid by reason only of the commencement of legal proceedings upon the subject-matter of the reference, but when legal proceedings upon the whole of the subject-matter of the reference have been commenced between all the parties to the reference and a notice thereof has been given to the arbitrators or umpire, all further proceedings in a pending reference shall, unless a stay of proceedings is granted under section 34, be invalid.

Effect of
legal procee-
dings on
arbitration.

(2) In this section the expression "parties to the reference" includes any persons claiming under any of the parties and litigating under the same title.

36. Where it is provided (whether in the arbitration agreement or otherwise) that an award under an arbitration agreement shall be a condition precedent to the bringing of an action with respect to any matter to which the agreement applies, the Court, if it orders (whether under this Act or any other law) that the agreement shall cease to have effect as regards any particular difference, may further order that the said provision shall also cease to have effect as regards that difference.

Power of
Court where
arbitration
agreement is
ordered not
to apply to
a particular
difference, to
order that a
provision
making an
award a con-
dition prece-
dent to an
action shall
not apply to
such differ-
ence.

(Chapter V.—General.)

Limitations.

37. (1) All the provisions of the Indian Limitation Act, 1908, shall IX of 190 apply to arbitrations as they apply to proceedings in Court.

(2) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, a cause of action shall, for the purpose of limitation, be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

(3) For the purposes of this section and of the Indian Limitation Act, 1908, an arbitration shall be deemed to be commenced when one IX of 190 party to the arbitration agreement serves on the other parties thereto, a notice requiring the appointment of an arbitrator, or where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring that the difference be submitted to the person so named or designated.

(4) Where the terms of an agreement to refer future differences to arbitration provide that any claims to which the agreement applies shall be barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by the agreement, and a difference arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(5) Where the Court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration agreement shall cease to have effect with respect to the difference referred, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Indian Limitation Act, 1908, for the commencement of IX of 190 the proceedings (including arbitration) with respect to the difference referred.

Disputes as to arbitrator's remuneration or costs.

38. (1) If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him, the Court may, on an application in this behalf, order that the arbitrator or umpire shall deliver the award to the applicant on payment into Court by the applicant of the fees demanded, and shall, after such inquiry, if any, as it thinks fit, further order that out of the money so paid into Court there shall be paid to the arbitrator or umpire by way of fees such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

(2) An application under sub-section (1) may be made by any party to the reference unless the fees demanded have been fixed by written agreement between him and the arbitrator or umpire, and the arbitrator or umpire shall be entitled to appear and be heard on any such application.

(Chapter V.—General. Chapter VI.—Appeals.
Chapter VII.—Miscellaneous.)

(3) The Court may make such orders as it thinks fit respecting the costs of an arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them.

CHAPTER VI.

APPEALS.

39. (1) An appeal shall lie from the following orders passed under this Act (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order:—

Appealable
orders.

An order—

- (i) superseding an arbitration;
- (ii) on an award stated in the form of a special case;
- (iii) modifying or correcting an award;
- (iv) filing or refusing to file an arbitration agreement;
- (v) staying or refusing to stay legal proceedings where there is an arbitration agreement;
- (vi) setting aside or refusing to set aside an award:

Provided that the provisions of this section shall not apply to any order passed by a Small Cause Court.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to ~~His Majesty in Council.~~ *The Supreme Court*

CHAPTER VII.

MISCELLANEOUS.

40. A Small Cause Court shall have no jurisdiction over any arbitration proceedings or over any application arising thereout save on application made under section 21.

Small Cause
Court not to
have jurisdiction
over
arbitrations
save arbitra-
tions in suits
before it.

41. Subject to the provisions of this Act and of rules made thereunder—

Procedure
and powers
of Court.

- s. (a) the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the Court, and to all appeals, under this Act, and

(Chapter VII.—Miscellaneous.)

- (b) the Court shall have, for the purpose of, and in relation to, arbitration proceedings, the same power of making orders in respect of any of the matters set out in the Second Schedule as it has for the purpose of, and in relation to, any proceedings before the Court:

Provided that nothing in clause (b) shall be taken to prejudice any power which may be vested in an arbitrator or umpire for making orders with respect to any of such matters.

Service of
notice by
party or
arbitrator.

42. Any notice required by this Act to be served otherwise than through the Court by a party to an arbitration agreement or by an arbitrator or umpire shall be served in the manner provided in the arbitration agreement, or if there is no such provision, either—

(a) by delivering it to the person on whom it is to be served, or

(b) by sending it by post in a letter addressed to that person at his usual or last known place of abode or business in [the Provinces] and registered under Chapter VI of the Indian Post Office Act, 1898. VI o

Power of
Court to issue
processes for
appearance
before
arbitrator.

43. (1) The Court shall issue the same processes to the parties and witnesses whom the arbitrator or umpire desires to examine as the Court may issue in suits tried before it.

(2) Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the reference, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitrator or umpire as they would incur for the like offences in suits tried before the Court.

(3) In this section the expression "processes" includes summonses and commissions for the examination of witnesses and summonses to produce documents.

Power to
High Court
to make
rules.

44. The High Court may make rules consistent with this Act as to—

(a) the filing of awards and all proceedings consequent thereon or incidental thereto;

(b) the filing and hearing of special cases and all proceedings consequent thereon or incidental thereto;

(c) the staying of any suit or proceeding in contravention* of an arbitration agreement;

(d) the forms to be used for the purposes of this Act;

(e) generally, all proceedings in Court under this Act.

* Subs. by the A. O. 1948 for "British India".

(Chapter VII.—Miscellaneous. The First Schedule.)

45. The provisions of this Act shall be binding on the Crown.

Crown to be bound.

46. The provisions of this Act, except sub-section (1) of section 3 and sections 7, 12 [36] and 37, shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as this Act is inconsistent with that other enactment or with any rules made thereunder.

Application of Act to statutory arbitrations.

47. Subject to the provisions of section 46, and save in so far as is otherwise provided by any law for the time being in force, the provisions of this Act shall apply to all arbitrations and to all proceedings thereunder:

Act to apply to all arbitrations.

Provided that an arbitration award otherwise obtained may with the consent of all the parties interested be taken into consideration as a compromise or adjustment of a suit by any Court before which the suit is pending.

48. The provisions of this Act shall not apply to any reference pending at the commencement of this Act, to which the law in force immediately before the commencement of this Act shall, notwithstanding any repeal effected by this Act, continue to apply.

Saving for pending references.

49. [Repeals and amendments.] *Rep. by the Repealing and Amending Act, 1945 (VI of 1945), s. 2 and Sch. I.*

THE FIRST SCHEDULE.

(See section 3.)

IMPLIED CONDITIONS OF ARBITRATION AGREEMENTS.

1. Unless otherwise expressly provided, the reference shall be to a sole arbitrator.

2. If the reference is to an even number of arbitrators, the arbitrators shall appoint an umpire not later than one month from the latest date of their respective appointments.

3. The arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow.

4. If the arbitrators have allowed their time to expire without making an award or have delivered to any party to the arbitration

¹ Ins. by s. 3 and Sch. II of the Repealing and Amending Act, 1942 (25 of 1942).

*(The First Schedule. The Second Schedule. The Third Schedule.
The Fourth Schedule.)*

agreement or to the umpire a notice in writing stating that they cannot agree, the umpire shall forthwith enter on the reference in lieu of the arbitrators.

5. The umpire shall make his award within two months of entering on the reference or within such extended time as the Court may allow.

6. The parties to the reference and all persons claiming under them shall, subject to the provisions of any law for the time being in force, submit to be examined by the arbitrators or umpire on oath or affirmation in relation to the matters in difference and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings and documents within their possession or power respectively, which may be required or called for, and do all other things which, during the proceedings on the reference, the arbitrators or umpire may require.

7. The award shall be final and binding on the parties and persons claiming under them respectively.

8. The costs of the reference and award shall be in the discretion of the arbitrators or umpire who may direct to, and by whom, and in what manner, such costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof and may award costs to be paid as between legal practitioner and client.

THE SECOND SCHEDULE.

(See section 41.)

POWERS OF COURT.

1. The preservation, interim custody or sale of any goods which are the subject-matter of the reference.

2. Securing the amount in difference in the reference.

3. The detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon or into any land or building in the possession of any party to the reference, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

4. Interim injunctions or the appointment of a receiver.

5. The appointment of a guardian for a minor or person of unsound mind for the purposes of arbitration proceedings.

The Third and Fourth Schedules. [Rep. by s. 2 and Sch. I of the Repealing and Amending Act, 1945 (VI of 1945).]

THE EXCESS PROFITS TAX ACT, 1940.

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ACT No. XV of 1940.¹

[6th April, 1940.]

An Act to impose a tax on excess profits arising out of certain businesses.

WHEREAS it is expedient to impose a tax on excess profits arising out of certain business in the conditions prevailing during the present hostilities;

It is hereby enacted as follows:—

Short title,
extent and
commence-
ment.

(2) It extends to the whole of India except the territories which immediately before the 1st November 1956, were comprised in Part B States.

ment may, by notification in the official Gazette, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “accounting period” in relation to any business means—

(a) where the accounts of the business are made up for successive periods of twelve months, each of such periods:

(b) in any other case, such period as the Excess Profits Tax Officer may determine:

Provided that in determining any accounting period under sub-clause (b) the Excess Profits Tax Officer shall have regard to the period, if any, which is, or has been, determined as the previous year for that business for the purposes of the Indian Income-tax Act, 1922;

(2) “Appellate Assistant Commissioner” means a person appointed to be an Appellate Assistant Commissioner of Excess Profits Tax under section 3;

¹ For the Statement of Objects and Reasons, *see* Gazette of India, 1940, Pt. V, p. 17, for the Report of the Select Committee, *see ibid.*, p. 115.

This Act has been supplemented by the Income-tax and Excess Profits Tax Emergency Ordinance, 1942 (60 of 1942) and the Income-tax and Excess Profits Tax (Validity of Notices) Ordinance, 1941 (45 of 1944).

This Act has been applied to all the partially excluded areas of the province of Orissa with effect from 13th April, 1940, by Orissa Regulation III of 1941; the Darjeeling district with effect from 25th July, 1940, by the late Bengal Govt. Notification No. 854-A.R., dated 20th July, 1940.

² The 13th April, 1940, *see* Gazette of India, 1940, Pt. I, p. 490.

The Act came into force in the Chota Nagpur Division and the Santhal Parganas on the 13th April, 1940, *see* s. 3 of Bihar Regulation I of 1941; and in partially excluded areas in C.P. and Berar on 13th April 1940, *see* C.P. and Berar Regulation I of 1944.

(3) "average amount of capital" means the average amount of capital employed in any business as computed in accordance with the Second Schedule;

(4) "Board of Referees" means a Board of Referees appointed under section 3;

¹[(4A) "British India" means, as respects any period before the 15th day of August, 1947, the territories then referred to as British India, and as respects any period after the 14th day of August, 1947, the territories for the time being comprised in the Provinces of India;]

(5) "business" includes any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture or any profession or vocation, but does not include a profession carried on by an individual or by individuals in partnership if the profits of the profession depend wholly or mainly on his or their personal qualifications unless such profession consists wholly or mainly in the making of contracts on behalf of other persons or the giving to other persons of advice of a commercial nature in connection with the making of contracts:

Provided that where the functions of a company or of a society incorporated by or under any enactment consist wholly or mainly in the holding of investments or other property the holding of the investments or property shall be deemed for the purpose of this definition to be a business carried on by such company or society:

Provided further that all businesses to which this Act applies carried on by the same person shall be treated as one business for the purposes of this Act;

(6) "chargeable accounting period" means—

(a) any accounting period falling wholly within the term beginning on the 1st day of September, 1939, and ending on the ²[31st day of March, 1946]; and

(b) where any accounting period falls partly within and partly without the said term, such part of that accounting period as falls within the said term;

(7) "Commissioner" means a person appointed to be a Commissioner of Excess Profits Tax under section 3;

II of 1913. (8) "company" means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession or of a law of an Indian State, and includes any

¹ Ins. by the India (Adaptation of Income-Tax, Profits Tax and Revenue Recovery Acts) Order, 1947 (G. G. O. 31, dated 10th December, 1947) (with effect from 15-8-47) see Gazette of India, Extraordinary, 1947, p. 1331.

² Subs. for "31st day of March, 1945" by s. 8 of the Indian Finance Act, 1945. The original date was "31st day of March, 1941". The figure 1941 was changed year to year into 1942, 1943, 1944 and 1945 by Acts, 7 of 1941, 12 of 1942, 8 of 1943 and by the Indian Finance Act, 1944, respectively.

foreign association whether incorporated or not which the Central Board of Revenue may, by general or special order, declare to be a company for the purposes of this Act;

(9) "deficiency of profits" means—

- (i) where profits have been made in any chargeable accounting period, the amount by which such profits fall short of the standard profits;
- (ii) where a loss has been made in any chargeable accounting period, the amount of the loss added to the amount of the standard profits;

(10) "director" includes any person occupying the position of a director by whatever name called and also includes any person who—

- (i) is a manager of the company or concerned in the management of the business; and
- (ii) is remunerated out of the funds of the business; and
- (iii) is the beneficial owner of not less than twenty per cent. of the ordinary share capital of the company;

(11) "dividend" has the meaning assigned to the expression in section 2 of the Indian Income-tax Act, 1922;

XI of 1922.

(12) "Excess Profits Tax Officer" means a person appointed to be an Excess Profits Tax Officer under section 3;

(13) "income" has the meaning assigned to the expression in section 2 of the Indian Income-tax Act, 1922;

XI of 1922.

(14) "fixed rate" in relation to dividends on share capital, other than ordinary share capital, includes a rate fluctuating in accordance with the maximum rate of income-tax;

(15) "Inspecting Assistant Commissioner" means a person appointed to be an Inspecting Assistant Commissioner of Excess Profits Tax under section 3;

(16) "loss" means a loss computed in the same manner as, for the purposes of this Act, profits are to be computed;

²[(16A) "ordinary share capital" has the meaning assigned to that expression in sub-section (8) of section 9;]

(17) "person" includes a Hindu undivided family;

(18) "prescribed" means prescribed by rules made under this Act;

(19) "profits" means profits as determined in accordance with the First Schedule;

(20) "standard profits" means standard profits as computed in accordance with the provisions of section 6;

¹ For such an order, see Gazette of India., 1941, Pt. I, p. 443.

² Ins. by s. 2 of the Excess Profits Tax (Amendment) Act, 1941 (11 of 1941).

(21) "statutory percentage" means—

(a) in relation to a business carried on by a body corporate (other than a company the directors whereof have a controlling interest therein), eight per cent. per annum;

¹[(b) in relation to a business carried on by a partnership of which one or more of the partners is a body corporate (other than a company the directors whereof have a controlling interest therein), such a rate per cent. as is equivalent to—

(i) eight per cent. per annum on so much of the average amount of the capital employed in the business during the chargeable accounting period as represents the share of any such body corporate, and

(ii) ten per cent. per annum on the remainder of that amount;

(c) in relation to a business to which neither sub-clause (a) nor sub-clause (b) applies, ten per cent. per annum:]

Provided that in relation to any decrease of capital the statutory percentage shall be in all cases six per cent.:

(21-A) Taxable Territories has the meaning assigned to that expression by clause (14A) of section 2 of the Indian Income-Tax Act, 1922.

~~1922. The expression "taxable territories" has the meaning assigned to that expression in sub-section (5) of section 10 of the Indian Income-tax Act, 1922.~~

3. (1) There shall be the following classes of excess profits tax authorities for the purposes of this Act, namely:—

Excess profits tax authorities.

(a) the Central Board of Revenue;

(b) Commissioners of Excess Profits Tax;

(c) Assistant Commissioners of Excess Profits Tax, who may be either Appellate Assistant Commissioners of Excess Profits Tax or Inspecting Assistant Commissioners of Excess Profits Tax;

(d) Excess Profits Tax Officers;

(e) Boards of Referees.

(2) Every Commissioner of Excess Profits Tax, Appellate Assistant Commissioner of Excess Profits Tax, Inspecting Assistant Commissioner of Excess Profits Tax and Excess Profits Tax Officer shall be a person who is exercising the functions of Commissioner of Income-tax, Appel-

¹ Subs. for the original clause (b) by s. 2 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from the 13th April, 1940).

late Assistant Commissioner of Income-tax, Inspecting Assistant Commissioner of Income-tax and Income-tax Officer, respectively, under the Indian Income-tax Act, 1922.

XI of 1922.

(3) The Central Board of Revenue shall, subject to the provisions of sub-section (2), appoint such persons as Commissioners of Excess Profits Tax, Appellate Assistant Commissioners of Excess Profits Tax, Inspecting Assistant Commissioners of Excess Profits Tax and Excess Profits Tax Officers as it thinks fit and such persons shall perform their functions in respect of such cases as the Central Board of Revenue may assign to them:

Provided that such directions shall be made entirely at the discretion of the Central Board of Revenue, and, in particular, it shall be competent for that Board to assign a case or class of cases to an officer who is not exercising in respect of that case or class of cases the corresponding functions in relation to the charge of income-tax under the Indian Income-tax Act, 1922.

XI of 1922.

(4) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Central Board of Revenue:

Provided that nothing in this sub-section applies to a Board of Referees:

Provided further that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions.

(5) A Board of Referees shall consist of not less than three and not more than five persons, of whom not less than one-half shall be non-officials having business experience, and one shall be a judicial officer who has exercised the powers of a District Judge or who possesses such qualifications as are normally required for appointment to the post of District Judge, and who has held judicial office for a period of not less than ten years.

(6) Subject to the provisions of sub-section (5), the Central Government may make rules regulating the formation, composition and procedure of Boards of Referees.

Charge of
tax.

24. ³[(1)] Subject to the provisions of this Act, there shall, in respect of any business to which this Act applies, be charged, levied and paid on the amount by which the profits during any chargeable accounting period exceed the standard profits a tax (in this Act referred to as "excess profits tax") which shall, in respect of any chargeable accounting period ending on or before the 31st day of March, 1941, be equal to fifty per cent. of that excess and shall, in respect of any chargeable accounting period beginning after that date, be equal to such percentage of that excess as may be fixed by the annual Finance Act:

¹ For the Excess Profits Tax (Boards of Referees) Rules, 1940, see Gazette, India, 1940, Pt. I, p. 1379.

² S. 4 was supplemented by s. 8 of the Indian Finance Act, 1945.

³ S. 4 was re-numbered as sub-section (1) of that section by s. 3 of the Excess Profits Tax (Amendment) Act, 1941 (11 of 1941).

XI of 1922.

Provided that any profits which are, under the provisions of sub-section (3) of section 4 of the Indian Income-tax Act, 1922, exempt from income-tax, and all profits from any business of life insurance shall be totally exempt from excess profits tax under this Act.

¹[Provided further that, in the case of any business which includes the mining of any mineral, any bonus paid by or through the Central Government in respect of increased output of the mineral shall be totally exempt from excess profits tax under this Act.]

²[(2) Where a chargeable accounting period falls partly before and partly after the end of March, 1941, the foregoing provisions of this section shall apply as if so much of that chargeable accounting period as falls before, and so much of that chargeable accounting period as falls after, the said end of March were each a separate chargeable accounting period, ³[and as if the excess of profits of that separate chargeable accounting period were an apportioned part of the excess of profits arising in the whole period determined in accordance with the provisions of section 7A.]]

XI of 1922.

5. This Act shall apply to every business of which any part of the profits made during the chargeable accounting period is chargeable to income-tax by virtue of the provisions of sub-clause (i) or sub-clause (ii) of clause (b) of sub-section (1) of section 4 of the Indian Income-tax Act, 1922, or of clause (c) of that sub-section: Application of Act.

Provided that this Act shall not apply to any business the whole of the profits of which accrue or arise without British India where such business is carried on by or on behalf of a person who is resident but not ordinarily resident in British India unless the business is controlled in India:

XI of 1922.

Provided further that where the profits of a part only of a business carried on by a person who is not resident in British India or not ordinarily so resident accrue or arise in British India or are deemed under the Indian Income-tax Act, 1922, so to accrue or arise, then, except where the business being the business of a person who is resident but not ordinarily resident in British India is controlled in India, this Act shall apply only to such part of the business, and such part shall for all the purposes of this Act be deemed to be a separate business.

the

the territories which immediately before the 1st November 1956, were comprised in

¹ Ins. by s. 2 of the Excess Profits Tax (Amendment) Ordinance, 1944 (8 of 1944).

² Sub-section (2) was ins. by s. 3 of the Excess Profits Tax (Amendment) Act, 1941 (11 of 1941).

³ Subs. by s. 2 of the Excess Profits Tax (Second Amendment) Act, 1941 (24 of 1941), for the original words.

⁴ Ins. by s. 3, *ibid.* This proviso shall not have effect in the making of certain assessments, see s. 1(2), *ibid.*

to be a (separate business the whole of the profits of which accrue or arise in ~~an Indian State~~, and the other part of the business shall, for all the purposes of this Act, be deemed to be a separate business.]

Standard
profits.

6. (1) For the purposes of this Act, the standard profits of a business in relation to any chargeable accounting period shall, subject to the provisions of sub-sections (3) and (4), be an amount bearing to the profits of the business during the standard period, if in respect of that business a standard period is available, the same proportion as the chargeable accounting period bears to the standard period:

Provided that if the average amount of capital employed in the business during such chargeable accounting period is greater or less than the average amount of capital employed during the standard period, such amount shall be increased or decreased, as the case may be, by an amount calculated by applying the statutory percentage to the amount of such increase or decrease:

Provided further that in the case of a business which was commenced on or after the 31st day of March, 1936, the standard profits shall, at the option of the person carrying on the business, be an amount calculated by applying the statutory percentage to the average amount of capital employed in the business during such chargeable accounting period.

(2) For the purposes of this section the standard period shall, at the option of the person carrying on the business, be—

- (a) the “previous year” as determined under section 2 of the Indian Income-tax Act, 1922, for the purpose of the income-tax assessment for the year ending on the 31st day of March, 1937, or the previous year as so determined for the year ending on the 31st day of March, 1938; or
- (b) the “previous year” as so determined for the year ending on the 31st day of March, 1937, and that for the year ending on the 31st day of March, 1939; or
- (c) the “previous year” as so determined for the year ending on the 31st day of March, 1938, and that for the year ending on the 31st day of March, 1939; or
- (d) the “previous year” as so determined for the year ending on the 31st day of March, 1939, and that for the year ending on the 31st day of March, 1940:

Provided that in no case shall any period of less than nine months be taken as a standard period.

(3) If, within the period specified in the notice issued under sub-section (1) of section 13, ¹[or within the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section], the person carrying on the business makes an application to the Excess

¹ Ins. by s. 3 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from the 13th April, 1940).

Profits Tax Officer in this behalf, the Excess Profits Tax Officer shall refer the application to the Board of Referees, and if the Board is satisfied that during the standard period the profits of the business were less than might at the beginning of that period have been reasonably expected, it may direct that the standard profits shall be computed as if the profits during the standard period were such greater amount as it thinks just:

Provided that such amount shall not exceed the statutory percentage of the average amount of the capital employed in the business unless the Board is satisfied that owing to some specific cause peculiar to the business it is just that a greater amount should be allowed.

¹[Provided further that a determination on an application under this sub-section—

(a) shall have effect with respect to all subsequent chargeable accounting periods;

(b) shall exclude any further application under this sub-section.]

(4) The standard profits shall be taken to be rupees thirty-six thousand in any case in which the standard profits computed in accordance with sub-section (1) are less than this sum:

Provided that if the chargeable accounting period is greater or less than one year the sum of rupees thirty-six thousand shall for the purpose of this sub-section be increased or decreased proportionately.

Geo. 5,
2.

(5) Where the standard period includes any period prior to the commencement of Part III of the Government of India Act, 1935, during which Burma was part of ~~British India~~, there shall, in computing the standard profits of a business under this section, be excluded from the profits of the business during the standard period so much of such profits as arose or accrued or were received in Burma unless such profits are also included in the profits of the business during the chargeable accounting period.

7. Where a deficiency of profits occurs in any chargeable accounting period in any business, the profits of the business chargeable with excess profits tax shall be deemed to be reduced and relief shall be granted in accordance with the following provisions:—

Relief on
occurrence
of deficiency
of profits.

(a) the aggregate amount of the profits so chargeable for the previous chargeable accounting periods shall be deemed to be reduced by the amount of the deficiency of profits and the amount of excess profits tax payable in respect thereof shall be deemed to be reduced accordingly and the relief necessary to give effect to the reduction shall be given by repayment or otherwise;

(b) where the amount of the deficiency of profits exceeds the aggregate amount of the profits so chargeable for the previous chargeable accounting periods, or where there is no

¹ Ins. by s. 3 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from the 13th April, 1940).

previous chargeable accounting period, the balance of the deficiency of profits or the whole of the deficiency, as the case may be, shall be applied in reducing any profits so chargeable for the next subsequent chargeable accounting period, and if and so far as it exceeds the amount of those profits, any profits so chargeable for the next subsequent chargeable accounting period and so on.

[Provided that a deficiency of profits occurring in a chargeable accounting period beginning on or after the 1st day of April, 1941, shall first be applied so as to reduce profits chargeable to tax arising in another chargeable accounting period beginning on or after the said 1st day of April, and a deficiency of profits occurring in a chargeable accounting period ending on or before the 31st day of March, 1941, shall first be applied so as to reduce profits chargeable to tax arising in another chargeable accounting period ending on or before the said 31st day of March; and where owing to an insufficiency of profits for chargeable accounting periods ending on or before the said 31st day of March, or, as the case may be, beginning on or after the said 1st day of April, the whole or any part of the deficiency is applied otherwise than as aforesaid,—

(a) the application shall be treated as provisional only; and

(b) if it thereafter appears that there is no longer such an insufficiency as aforesaid, such adjustment shall be made as the Central Board of Revenue may by written order direct:

Provided further that where a chargeable accounting period falls partly before and partly after the end of March, 1941, the provisions of the preceding proviso shall apply as if so much of the chargeable accounting period as falls before, and so much of the chargeable accounting period as falls after, the said end of March, were each a separate chargeable accounting period, and as if the deficiency of profits of that separate chargeable accounting period were an apportioned part of the deficiency of profits occurring in the whole period; and any apportionment required to be made by this proviso shall be made by reference to the number of months or fractions of months in each of the parts of the whole chargeable accounting period.]

Special provision for chargeable accounting period falling partly before and partly after the end of March, 1941.

²[7A. (1) In the case of a chargeable accounting period such as is referred to in sub-section (2) of section 4, the excess of profits of each of the separate chargeable accounting periods into which the whole chargeable period is deemed to be divided for the purposes of that sub-section shall be determined in accordance with the provisions of sub-sections (2), (3) and (4), and in those sub-sections—

¹ Ins. by s. 4 of the Excess Profits Tax (Amendment) Act, 1941 (11 of 1941).

² Ins. by s. 4. of the Excess profits Tax (Second Amendment) Act, 1941 (24 of 1941).

(a) references to the whole period, the first part of the period, and the second part of the period shall be construed, respectively, as references to the whole of the chargeable accounting period deemed to be divided, so much thereof as falls before the end of March, 1941, and so much thereof as falls after the said end of March;

(b) "excess profits" means the amount by which the profits for any period exceed the standard profits for that period.

(2) The profits or loss of, and the standard profits for, the whole period shall be computed first on the basis that rule 5A of the First Schedule and rule 2A of the Second Schedule do not apply to the period, and secondly on the basis that the said rules do apply to the period, and it shall then be ascertained, on each basis, whether there are excess profits or a deficiency of profits for the whole period, and, if so, what is the amount thereof.

(3) There shall be deemed to be for the first part of the period excess profits or a deficiency of profits, as the case may be, equal to an apportioned part of the excess profits or deficiency of profits ascertained under sub-section (2) on the first basis mentioned therein, and there shall be deemed to be for the second part of the period excess profits or a deficiency of profits, as the case may be, equal to an apportioned part of the excess profits or deficiency of profits ascertained under sub-section (2) on the second basis mentioned therein; and, for the purpose of giving relief for deficiencies of profits under section 7, the first part of the period and the second part of the period shall each be treated as if it were a separate chargeable accounting period.

(4) Any apportionment required to be made by sub-section (3) shall be made by reference to the number of months and fractions of months in each of the parts of the whole period.]

8. (1) As from the date of any change in the persons carrying on a business, the business shall, subject to the provisions of this section, be deemed for all the purposes of this Act except for the purposes of determining the amount of the statutory percentage to have been discontinued, and a new business to have been commenced.

Successions
and amalga
mations.

(2) Where the change took place before the 1st day of September, 1939, and consisted in the death or retirement of a partner, or the taking in of a partner, the persons carrying on the business after the change may, by notice given in writing before the prescribed date to the Excess Profits Tax Officer, elect that, for the purposes of the provisions of this Act relating to the computation of standard profits, the business shall not be deemed to have been discontinued.

(3) A business shall not, for the purposes of the provisions of this Act relating to the computation of standard profits, be deemed to be discontinued by reason of any change occurring on or after the 1st day of September, 1939, in the persons carrying it on, and the standard profits of the business in relation to any chargeable accounting period shall be computed accordingly, and, in particular, in computing the

capital employed in the business after the change ¹[and in considering, for the purposes of computing the profits of, and the capital employed during, any chargeable accounting period, whether any and, if so, what deductions are to be made in respect of depreciation of buildings, plant and machinery,] no regard shall be had to any consideration given in respect of the transfer of the business or any of the assets thereof on the occasion of the change.

(4) Where, on or after the 1st day of September, 1939, two or more businesses are amalgamated, the resulting business shall be treated for the purposes of the provisions of this Act relating to the computation of standard profits as if—

- (a) it had been in existence throughout the period during which there were in existence any of the former businesses;
- (b) any profits made or losses incurred or capital employed in any of those former businesses had been made, incurred or employed in the resulting business; and
- (c) any assets of any of those former businesses had become assets of the resulting business when they became assets of the former business;

and, in particular, in computing the capital employed in the resulting business, ¹[and in considering, for the purposes of computing the profits of, and the capital, employed during, any chargeable accounting period, whether any and, if so, what deductions are to be made in respect of depreciation of buildings, plant and machinery,] no regard shall be had to any consideration given in respect of the transfer of any of those former businesses or any of the assets thereof on the occasion of the amalgamation.

(5) Where, on or after the 1st day of September, 1939, part of a business is transferred as a going concern by the person theretofore carrying it on to another person, the part transferred and the part not transferred shall each be deemed for the purposes of the provisions of this Act relating to the computation of standard profits to be a continuation of the original business, and the said provisions, including the provisions of this section relating to amalgamations, shall apply accordingly 2* * * * :

Provided that, for the purposes aforesaid, such apportionments shall be made of the profits made, and losses incurred, and the capital employed, in the original business, and of any assets of the original business as may appear to the Excess Profits Tax Officer, or on appeal in the prescribed time and manner to the Board of Referees to that Board, to be just.

(6) Notwithstanding anything in the foregoing provisions of this section, where a business was carried on immediately before the 1st

¹ Ins. by s. 4 the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

² Certain words were rep. *ibid* (with effect from the 13th April, 1940).

day of April, 1936, and that business, or the main part of that business was transferred after the said day and before the 1st day of September, 1939, by the person carrying it on to another person, the Excess Profits Tax Officer, if he is satisfied that the business carried on after the transference was not substantially different from the business or part transferred, shall, on the application of the person carrying on the business after the transference, treat that person, for the purposes of the provisions of this Act relating to the computation of standard profits, as if he had carried on the transferred business or part of the business as from the date of the commencement of that business 1* * * * *

(7) Where, on or after the 1st day of September, 1939, a partner in a firm carrying on a business to which this Act applies dies, then notwithstanding anything contained in sub-section (1) any deficiency of profits in respect of any chargeable accounting period ending on or before the date of his death shall, if it has not been fully applied in reducing the profits of any chargeable accounting period under section 7, be carried forward and applied in reducing any profits from the same business carried on by the surviving partner or partners in the first chargeable accounting period after the death of the partner, and if and so far as it exceeds the amount of those profits, in reducing any profits from such business in the next subsequent chargeable accounting period and so on.

2[(8) Where—

- (a) a business is, by virtue of sub-section (2) or sub-section (3), deemed not to have been discontinued; or
- (b) a business is, by virtue of sub-section (4), to be treated as if it had been in existence throughout the period during which there was in existence any other business; or
- (c) a business is, by virtue of sub-section (5), to be treated as a continuation of another business; or
- (d) any person who is carrying on a business after a transfer is treated, by virtue of sub-section (6); as having carried on the business as from a date before the transfer,

the provisions of this Act relating to the computation of profits and capital for the purposes of excess profits tax shall, both as respects the standard period and any chargeable accounting period, have effect subject to such modifications, if any, as the Excess Profits Tax Officer may think just, and the Excess Profits Tax Officer may make such alterations in the periods which would otherwise be the chargeable accounting periods of the business as he thinks proper:

Provided that if the Excess Profits Tax Officer makes any such modifications and the person carrying on the business is dissatisfied with the modifications so made, or if the person carrying on the busi-

¹ Certain words were rep. by s. 4 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

² Ins. *ibid* (with effect from the 13th April, 1940).

ness is dissatisfied with the refusal of the Excess Profits Tax Officer to make any such modifications, he may, at any time before the expiry of forty-five days from the date on which the order of the Excess Profits Tax Officer is communicated to him, appeal to the Board of Referees through the Excess Profits Tax Officer.]

Inter-connected
companies.

9. (1) Where any interest, annuity or other annual payment, or any royalty or rent, is paid by one company to another company, and one of those companies is a subsidiary of the other, or both are subsidiaries of a third company, the capital, profits and losses of both companies shall be computed for the purposes of this Act as if—

- (a) the interest, annuity, annual payment, royalty or rent were not payable;
- (b) any debt in respect of which any such interest is payable did not exist; and
- (c) any asset in respect of which any such royalty or rent is payable were the property of the company paying the royalty or the rent.

(1A) Where—

- (a) any debt is owing to any company by another company; and
- (b) one of those companies is a subsidiary of the other, or both are subsidiaries of a third company; and
- (c) no interest is payable in respect of the debt, but the circumstances in which the debt came into existence or is allowed to continue to exist are such that the debt represents in substance capital employed in the business of the debtor company.

the capital of both companies shall be computed as if the debt did not exist.]

(2) Where—

- (a) a company (hereinafter referred to as "the principal company") is resident in ~~British India~~ and is not a subsidiary of any other company resident in ~~British India~~; and
- (b) during the whole or any part of any chargeable accounting period of the principal company, another company, whether or not resident or carrying on business within ~~British India~~ (hereinafter referred to as "the subsidiary company") is a subsidiary of the principal company,

the following provisions of this section shall, subject to the provisions of section 5, have effect in relation to that chargeable accounting period.

(3) If the subsidiary company is a subsidiary of the principal company throughout the chargeable accounting period, such capital em-

¹ Ins. by s. 5 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from the 13th April, 1940).

chargeable
accounting
periods

ployed in, and profits or losses arising from, the business of the subsidiary company as is employed or arise in—

(i) the chargeable accounting period; or

(ii) any year constituting or comprised in the standard period of the principal company,

shall be treated for the purposes of this Act as if it or they were capital employed in, or as the case may be, profits or losses arising from, the business of the principal company.

(4) If the subsidiary company is a subsidiary of the principal company during part only of the chargeable accounting period, the excess or deficiency of profits of the subsidiary company for that part of that period shall be treated as increasing or as the case may be, decreasing the excess or deficiency of profits of the principal company for the whole period and shall not be deemed to be an excess or deficiency of profits of the subsidiary company.

In this sub-section, the expressions “excess” and “deficiency” mean, in relation to profits, an excess or deficiency in relation to the standard profits of the subsidiary company or, as the case may be, the principal company.

(5) In any case to which sub-section (3) or sub-section (4) applies, such alteration, if any, of the periods which would otherwise be the chargeable accounting periods of the subsidiary company shall be made as the Central Board of Revenue may direct.

(6) For the purposes of this section, a company shall be deemed to be a subsidiary of another company if and so long as not less than nine-tenths of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies.

(7) The amount of ordinary share capital of one company owned by a second company through another company or other companies, or partly directly and partly through another company or other companies shall be determined in accordance with the provisions of the Third Schedule.

(8) In this section and the Third Schedule references to ownership shall be construed as references to beneficial ownership, and the expression “ordinary share capital”, in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders whereof have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.

(9) The principal company shall be entitled to allocate to its subsidiary company or companies the respective proportionate shares of the excess profits tax payable by the whole group.

(10) The excess profits tax payable by virtue of this section by the principal company in respect of the profits of any subsidiary company

shall, for the purposes of section 12, be deemed to have been paid by the subsidiary company and not by the principal company.

Artificial transactions.

¹[10. (1) In computing profits for the purposes of this Act no deduction shall be made in respect of any transaction or operation of any nature if and so far as it appears that the transaction or operation has artificially reduced or would artificially reduce the profits.]

(2) If the Excess Profits Tax Officer is satisfied that any person has entered into or carried out any transaction or operation by which the profits have been or would be artificially reduced, he may, with the previous approval of the Inspecting Assistant Commissioner, direct that such person shall pay, in addition to any excess profits tax for which he is or, but for such transaction or operation, would be liable, a penalty not exceeding the tax evaded or sought to be evaded.]

Transactions designed to avoid or reduce liability to excess profits tax.

²[10A. (1) Where the Excess Profits Tax Officer is of opinion that the main purpose for which any transaction or transactions was or were effected [whether before or after the passing of the Excess Profits Tax XXIV (Second Amendment) Act, 1941] was the avoidance or reduction of liability to excess profits tax, he may, with the previous approval of the Inspecting Assistant Commissioner, make such adjustments as respects liability to excess profits tax as he considers appropriate so as to counteract the avoidance or reduction of liability to excess profits tax which would otherwise be effected by the transaction or transactions. 1941.]

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the powers conferred thereby extend—

(a) to the charging with excess profits tax of persons who but for the adjustments would not be chargeable with any tax or would not be chargeable to the same extent;

(b) to the charging of a greater amount of tax than would be chargeable but for the adjustments.

(3) Any person aggrieved by a decision of the Excess Profits Tax Officer under this section may appeal in the prescribed time and manner to the Appellate Tribunal.]

Relief in respect of double excess profits taxation.

11. (1) The Central Government may by notification in the official Gazette make ³provision for the granting of relief in cases where both excess profits tax under this Act and excess profits tax under any law in force in the United Kingdom, in ~~any Indian State~~ ^{any Part B State}, or in any other part of His Majesty's Dominions have been paid upon the profits of any business if it appears to the Central Government that the laws of the United Kingdom or of that ~~Indian State~~ ^{any Part B State} or of that other part of His Majesty's Dominions provide for corresponding relief in respect

¹ Sub. by s. 5 of the Excess Profits Tax (Second Amendment) Act, 1941 (24 of 1941).

² Ins. by s. 6, *ibid*.

³ For the Excess Profits Double Taxation (India and the United Kingdom) Rules and the Excess Profits Double Taxation (India and Aden) Rules, *see* Gazette of India, 1941, Pt. I, p. 873 and *ibid*, 1942, Pt. I, p. 745, respectively.

of excess profits tax charged on profits both in the United Kingdom or in that ~~State~~ or in that part and in British India: ^{territory}

Provided that where under section 19 of the Finance (No. 2) Act, 1939, national defence contribution has been paid in the United Kingdom in lieu of excess profits tax, that portion of the national defence contribution so paid which is equal to the excess profits tax which would otherwise have been payable shall, for the purposes of this sub-section, be deemed to be excess profits tax paid in the United Kingdom.

(2) If any person, who has paid excess profits tax under this Act for any chargeable accounting period in respect of profits arising outside India in a country the laws of which do not provide for any relief in respect of excess profits tax charged in ~~British India~~, proves that he has paid excess profits tax under the laws of the said country in respect of the same profits, he shall be entitled to the deduction from the excess profits tax payable in ~~British India~~ of a sum equal to one-half thereof or to one-half of the excess profits tax payable in the said country, whichever is the less.

¹[11A. The Central Government may enter into an agreement with Pakistan for the avoidance of double taxation of profits under this Act and under the corresponding law in force in Pakistan, and may, by notification in the official Gazette, make such provision as may be necessary for implementing the agreement.] ^{Agreement for avoidance of double taxation in India and Pakistan.}

12. (1) The amount of the excess profits tax payable in respect of a business for any chargeable accounting period diminished by any amount allowable by way of relief under the provisions of section 11, ²[or section 11A] shall, in computing for the purposes of income tax or super-tax the profits and gains of that business, be allowed to be deducted as an expense incurred in that period. ^{Allowance of excess profits tax in computing income for income-tax purposes.}

(2) There shall also be so deducted the amount of any excess profits tax payable under any law in force in a country outside ~~British India~~ on the profits of the business in respect of any chargeable accounting period ²[to the extent to which such profits are liable to excess profits tax under this Act] after diminishing such amount by any amount which is allowable by way of relief by repayment, set off or otherwise under any law in the country where the tax is payable providing for the granting of relief in that country where excess profits tax has also been charged in ~~British India~~:

Provided that where, under the provisions of this Act relating to deficiencies of profits or under any corresponding law in force in the

¹ Ins. by the India (Adaptation of Income-tax, Profits Tax and Revenue Recovery Acts) Order, 1947 (G.G.O. 31, dated 10th December 1947) (with effect from 15th August 1947)—see Gazette of India, Extraordinary, 1947, p. 1331.

² Subs. for "to the extent that such profits arose in the said country" by s. 6 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

~~The taxable territories~~

said country without British India, relief is given by way of repayment from excess profits tax chargeable for any chargeable accounting period previous to that in which the deficiency occurs, the amount of the deduction allowed under sub-section (1) or sub-section (2) shall not be altered, but the amount repayable shall be taken into account in computing the profits and gains of the business for the purposes of income-tax as if it were a profit of the business accruing in the ¹[previous year (as determined for that business for the purposes of the Indian Income-tax Act, 1922),] in which the deficiency of profits occurs.

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Issue of
notice for
assessment.

13. (1) The Excess Profits Tax Officer may, for the purposes of this Act, require any person whom he believes to be engaged in any business to which this Act applies, or to have been so engaged during any chargeable accounting period, or to be otherwise liable to pay excess profits tax, to furnish within such period, not being less than sixty days from the date of the service of the notice, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) with respect to any chargeable accounting period specified in the notice the profits of the business and the standard profits of the business as computed in accordance with the provisions of section 6 or the amount of deficiency available for relief under section 7:

Provided that the Excess Profits Tax Officer may, in his discretion, extend the date for the delivery of the return.

(2) The Excess Profits Tax Officer may serve on any person upon whom a notice has been served under sub-section (1), a notice requiring him on a date to be therein specified to produce, or cause to be produced, such accounts or document as the Excess Profits Tax Officer may require and may from time to time serve further notices in like manner requiring the production of such further accounts or documents or other evidence as he may require:

Provided that the Excess Profits Tax Officer shall not require the production of any accounts relating to a period prior to the "previous year" as determined under section 2 of the Indian Income-tax Act, 1922, for the purpose of the income-tax assessment for the year ending on the 31st day of March, 1937.

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Assessments.

14. (1) The Excess Profits Tax Officer shall, by an order in writing after considering such evidence, if any, as he has required under section 13, assess to the best of his judgment the profits liable to excess profits tax and the amount of excess profits tax payable on the basis of such assessment, or if there is a deficiency of profits, the amount of that deficiency and the amount of excess profits tax, if any, repayable and shall furnish a copy of such order to the person on whom the assessment has been made.

(2) Excess profits tax payable in respect of any chargeable accounting period shall be payable by the person carrying on the business in that period.

¹ Sub. "for chargeable accounting period", by s. 6 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

(3) Where two or more persons were carrying on the business jointly in the chargeable accounting period, the assessment shall be made upon them jointly and, in the case of a partnership, may be made in the partnership name.

(4) Where by virtue of the foregoing provisions an assessment could, but for his death, have been made on any person either solely or jointly with any other person or persons, the assessment may be made on his legal representative either solely or jointly with that other person or persons, as the case may be.

¹[14A. (1) The Excess Profits Tax Officer, before proceeding to make an assessment (in this section referred to as the regular assessment) under section 14, may, at any time after the expiry of the period, specified in the notice issued under sub-section (1) of section 13 as that within which the return therein referred to is to be furnished, and whether the return has or has not been furnished, proceed to make in summary manner a provisional assessment of the amount by which the profits of the chargeable accounting period exceed the standard profits, and the amount of excess profits tax payable thereon. Power to make provisional assessments.

(2) Before making such provisional assessment the Excess Profits Tax Officer shall give notice in the prescribed form to the person on whom assessment is to be made of his intention to do so, and shall with the notice forward a statement of the amount of the proposed assessment, and the said person shall be entitled to deliver to the Excess Profits Tax Officer at any time within fourteen days of receipt of the said notice a statement of his objections, if any, to the amount of the proposed assessment.

(3) On expiry of one month from the date of service of the notice referred to in sub-section (2), or earlier if the assessee agrees to the proposed assessment, the Excess Profits Tax Officer may, after taking into account the objections, if any, made under sub-section (2), make a provisional assessment, and shall furnish a copy of the order of assessment to the assessee:

Provided that assent to the amount of the assessment, or failure to make objection to it, shall in no way prejudice the assessee in relation to the regular assessment.

(4) In making any such provisional assessment the Excess Profits Tax Officer shall make allowances for any deficiencies of profits for previous chargeable accounting periods which are under the provisions of section 7 to be set off against the excess profits of the chargeable accounting period in respect of which the assessment is being made:

Provided that where such deficiencies of profits have not been determined under sub-section (1) of section 14 the Excess Profits Tax Officer shall estimate the amount thereof to the best of his judgment.

(5) There shall be no right of appeal against a provisional assessment made under this section, and it shall, until a regular assessment

¹ Ins. by s. 3 of the Excess Profits Tax Ordinance, 1943 (16 of 1943).

is made in due course under section 14, determine the amount of excess profits tax due from the assessee.

(6) If, when a regular assessment is made in due course under section 14, the amount of excess profits tax payable thereunder is found to exceed that determined as payable by the provisional assessment, it shall be reduced by the amount determined as payable by the provisional assessment.

(7) If, when a regular assessment is made in due course under section 14, the amount of excess profits tax payable thereunder is found to be less than that determined as payable by the provisional assessment, any excess of tax paid as a result of the provisional assessment shall be refunded to the assessee together with interest at 5 *per cent. per annum*, calculated from the date of payment of such excess tax to the date of the order of refund, both days inclusive.]

Profits
escaping
assessment,

15. If, in consequence of definite information which has come into his possession, the Excess Profits Tax Officer discovers that profits of any chargeable accounting period chargeable to excess profits tax have escaped assessment, or have been underassessed, or have been the subject of excessive relief, he may at any time * * * serve on the person liable to such tax a notice containing all or any of the requirements which may be included in a notice under section 13, and may proceed to assess or re-assess the amount of such profits liable to excess profits tax and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under that section.

Penalties.

16. If the Excess Profits Tax Officer, the Appellate Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that any person has, without reasonable cause, failed to furnish the return required under sub-section (1) of section 13, or to produce or cause to be produced the accounts or documents or other evidence required by the Excess Profits Tax Officer under sub-section (2) of that section, or has concealed particulars of the profits made by or capital employed in the business, or has deliberately furnished inaccurate particulars of such profits or capital, he may direct that such person shall pay by way of penalty, in addition to the amount of any excess profits tax payable, a sum not exceeding—

- (a) where the person has failed to furnish the return required under sub-section (1) of section 13, the amount of the excess profits tax payable; and
- (b) in any other case, the amount of excess profits tax which would have been avoided if the return made had been accepted as correct:

Provided that the Excess Profits Tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner.

¹ The words "within five years of the end of the chargeable accounting period in question" were rep. by s. 16 of the Income-tax and Excess Profits Tax (Amendment) Act, 1947 (22 of 1947) (with effect from 31-3-1947).

17. (1) Any person aggrieved by a decision made in pursuance of section 8, or objecting to the amount of excess profits tax for which he is liable as assessed by the Excess Profits Tax Officer or denying his liability to be assessed under this Act, or objecting to any penalty imposed by the Excess Profits Tax Officer, or to the amount of any deficiency of profits as assessed by the Excess Profits Tax Officer, or to the amount allowed by the Excess Profits Tax Officer, by way of relief under any provision of this Act or to any refusal by the Excess Profits Tax Officer to grant relief may appeal to the Appellate Assistant Commissioner:

Appeals.

Provided that no appeal shall lie against a determination of the amount of the profits of any standard period where those profits have been determined in accordance with the ¹[second proviso] to rule 1 of the First Schedule except in respect of adjustments made under the provisions of that Schedule:

²[Provided further that no appeal shall lie under this section against any apportionment made by the Excess Profits Tax Officer under the proviso to sub-section (5) of section 8, against any ³[refusal to make modifications or against any modifications] made by the Excess Profits Tax Officer under sub-section (8) of section 8, against any decision of the Excess Profits Tax Officer under rule 11 of the First Schedule, or against any decision of the Board of Referees or the Central Board of Revenue.]

(2) An appeal shall ordinarily be presented within forty-five days of receipt of the notice of demand relating to the assessment or penalty objected to, or in the case of an appeal against the assessment of a deficiency of profits within forty-five days of the receipt of the copy of the order determining the deficiency, or in the case of an appeal against the amount of a relief granted or a refusal to grant relief, within forty-five days of the receipt of the intimation of the order granting or refusing to grant the relief, but the Appellate Assistant Commissioner may admit an appeal after the expiration of that period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(3) An appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(4) The Appellate Assistant Commissioner shall hear and determine the appeal and, subject to the provisions of this Act, shall pass such orders as he thinks fit, and such orders may include an order enhancing the assessment or a penalty:

Provided that an order enhancing an assessment or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

¹ Subs. for "first proviso" by s. 5 of the Excess Profits Tax (Amendment) Act, 1941 (11 of 1941).

² Subs. for the original proviso by s. 7 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

³ Subs. for "modifications" by s. 5 of Act 11 of 1941.

(5) The procedure to be adopted in the hearing and determination of appeals shall be in accordance with the rules made in this behalf by the Central Board of Revenue.

Appeal to
Commi-
sioner agai-
nst Appellate
Assistant
Commission-
er's orders
imposing pe-
nalties or
enhancing
assessment
or penalties.

¹18. (1) Any person objecting to an order passed by an Appellate Assistant Commissioner imposing on him a penalty under section 16 or enhancing his assessment or enhancing a penalty under section 17 may appeal to the Commissioner within thirty days of the date on which he was served with notice of such order.

(2) In disposing of the appeal the Commissioner may, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit.

(3) On the coming into operation of Part II of the Indian Income-tax (Amendment) Act, 1939, this section shall cease to have effect. VII of 1939

Power of
revision.

²19. (1) The Commissioner may of his own motion call for the record of any proceeding under this Act which has been taken by any Excess Profits Tax Officer or Appellate Assistant Commissioner subordinate to him, and on receipt of the record may make such enquiry, or cause such enquiry to be made, and, subject to the provisions of this Act, may pass such orders thereon (including an order enhancing an assessment) as he thinks fit:

Provided that he shall not pass any order prejudicial to a person to whose business this Act applies without hearing him, or giving him a reasonable opportunity of being heard.

(2) On the coming into operation of Part II of the Indian Income-tax (Amendment) Act, 1939, sub-section (1) shall cease to have effect, VII of 1939, but thereafter any Excess Profits Tax Officer or any person in respect of whose business an order under section 14 has been passed who objects to an order passed by an Appellate Assistant Commissioner under section 16 or section 17 may, within the prescribed time and in the prescribed manner, appeal against such order to the Appellate Tribunal constituted under the Indian Income-tax Act, 1922, and that Tribunal XI of 1922. shall have all such powers in disposing of the appeal as it has in respect of appeals preferred to it under the Indian Income-tax Act, 1922. XI of 1922.

Rectification
of mistakes.

20. The Commissioner may, at any time within four years from the date of any order passed whether by himself or by any Appellate Assistant Commissioner or Excess Profits Tax Officer under this Act rectify any mistake in any evidence recorded during assessment or appellate proceedings, or any mistake apparent from the record and shall within the like period rectify any mistake apparent from the record which has been brought to his notice by a person to whose business this Act applies:

¹ This section ceased to have effect as from the 25th January, 1941 by virtue of sub-section (3) of this section.

² Sub-section (1) ceased to have effect from the 25th January, 1941 by virtue of sub-section. (2) of this section.

Provided that no such rectification shall be made having the effect of enhancing the liability of any person unless that person has been given a reasonable opportunity of being heard.

21. The provisions of sections 4A, 4B, 10, 13, 24B, 29, 36 to 41C (inclusive), 45 to 48 (inclusive), 49E, 49F, 50, 54, 61 to 63 (inclusive), 65 to 67A (inclusive) of the Indian Income-tax Act, 1922, shall apply with such modifications, if any, as may be prescribed as if the said provisions were provisions of this Act and referred to excess profits tax instead of to income-tax, and every officer exercising powers under the said provisions in regard to income-tax may exercise the like powers under this Act in regard to excess profits tax in respect of cases assigned to him under sub-section (3) of section 3 as he exercises in relation to income-tax under the said Act:

Application of provisions of Act XI of 1922.

Provided that references in the said provisions to the assessee shall be construed as references to a person to whose business this Act applies.

21A. Any reference in this Act to the Indian Income-tax Act 1922, shall, in relation to the profits of any chargeable accounting period and to the state of affairs and all the circumstances necessary to determine the charge to excess profits tax, mean the said Act as in force in the relevant period:

Application of Income-tax Act before 15th day of August, 1947 with certain modification.

Provided that whatever be the relevant period, references to section 46 of the said Act shall be deemed to include references to sub-sections (8), (9) and (10) of that section.]

22. (1) Notwithstanding anything contained in the Indian Income-tax Act, 1922, all information contained in any statement or return made or furnished under the provisions of that Act or obtained or collected for the purposes of that Act, may be used for the purpose of this Act.

Income-tax papers to be available for the purposes of this Act.

(2) All information contained in any statement or return made or furnished under the provisions of this Act or obtained or collected for the purposes of this Act may be used for the purposes of the Indian Income-tax Act, 1922.

23. If any person fails, without reasonable cause or excuse, to furnish in due time any return or statement, or to produce or cause to be produced, any accounts or documents required to be produced under section 13, he shall on conviction by a Magistrate be punishable with fine which may extend to five hundred rupees, and with a further fine which may extend to fifty rupees for every day during which the default continues.

Failure to deliver returns or statements.

24. If a person makes in any return required under section 13, any statement which is false, and which he either knows or believes to be false or does not believe to be true, he shall be punishable on conviction

False statement and declaration.

¹ Ins. by the India (Adaptation of Income-tax, Profits Tax and Revenue Recovery Acts) Order, 1947, (G.G.O. 31, dated 10th December 1947) (with effect from 15th August 1947)—see Gazette of India, 1947, Extraordinary, p. 1331.

by a Magistrate with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Institution
of proceed-
ings and
composition
of offences,

25. (1) A person shall not be proceeded against for an offence under section 23 or section 24 except at the instance of the Inspecting Assistant Commissioner.

(2) No prosecution for an offence punishable under section 23 or section 24 or under the Indian Penal Code shall be instituted in respect of the same facts as those in respect of which a penalty has been imposed under this Act. XLV of 1860.

(3) The Inspecting Assistant Commissioner may, either before or after the institution of proceedings, compound any offence punishable under section 23 or section 24.

Power of
Central
Board of
Revenue to
grant relief
in special
cases,

26. (1) If [on an application made to it through the Excess Profits Tax Officer] the Central Board of Revenue is satisfied in the case of any business that special circumstances exist which render it inequitable that the standard profits of the business in relation to any chargeable accounting period should be computed in accordance with the provisions of sub-section (1) of section 6, and that no relief or insufficient relief has been granted under the provisions of sub-section (3) of that section, the Central Board of Revenue may direct that the standard profits of the business shall be computed to be such greater amount as the Central Board of Revenue thinks just:

Provided that such amount shall not exceed the statutory percentage of the average amount of the capital employed in the business unless the Central Board of Revenue is satisfied that owing to some specific cause peculiar to the business it is just that a greater amount should be allowed and that the relief, if any, afforded by the Board of Referees under sub-section (3) of section 6 is inadequate.

¹[Provided further that a determination on an application under this sub-section—

(a) shall have effect with respect to all subsequent chargeable accounting periods;

(b) shall exclude any further application under this sub-section.]

(2) Without prejudice to the generality of the provisions of sub-section (1) the Central Board of Revenue shall, in considering the making of a direction under that sub-section, have regard to the following circumstances, namely—

(a) that the capital employed in a business commenced on or after the 1st day of July, 1938, is so small in relation to

¹ Ins. by s. 8 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

the volume of the activities of the business that to compute the standard profits in accordance with the provisions of section 6 would be inequitable, taking into account the normal profits made in similar businesses;

- (b) that owing to the nature of the business heavy expenditure by way of preliminary expenses or expenses in connection with experimental or development work has been incurred in accounting periods closely preceding the chargeable accounting period and that during the chargeable accounting period such expenditure would normally fall to be written off wholly or partly in the books of the person chargeable to excess profits tax;
- (c) that the business is of a pioneer nature, that is to say, is concerned with an industrial process or a form of manufacture or production not undertaken in ~~British India~~ before the 1st day of April, 1932, and has not been in existence long enough to have paid income-tax for the previous year as determined for the purpose of the income-tax assessment for the year beginning on the 1st day of April, 1937.

(3) If ¹[on an application made to it through the Excess Profits Tax Officer] the Central Board of Revenue is satisfied that the computation in accordance with the provisions of Schedule I of the profits of a business during any chargeable accounting period would be inequitable, owing to any of the following circumstances, namely:—

- (a) any postponement or suspension, as a consequence of the present hostilities, of renewals or repairs, or
- (b) the provision of buildings, plant or machinery which will not be required for the purposes of the business after the termination of the present hostilities, or
- (c) difficulties in bringing into ~~British India~~ income arising outside ~~British India~~ where the country in which the income accrued prohibits or restricts by its laws the remittance of money to ~~British India~~, and loss in the remittance to ~~British India~~ of such income because of fluctuations in the rate of exchange between that country and ~~British India~~;

²for

- (d) in the case of any business which includes the winning of any mineral (including mineral oil) the winning of which is of exceptional importance for the prosecution of the present war, an increase in the output of the mineral which was essential in the national interest and which has had the effect of shortening the period during which but

¹ Ins. by s. 8 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

² Ins. by s. 7 of the Excess Profits Tax (Second Amendment) Act, 1941 (24 of 1941).

for such increased wartime output the source of the mineral might have been expected to be exhausted;]

the Central Board of Revenue may direct that such allowances shall be made in computing the profits of the business during that chargeable accounting period as the Central Board of Revenue thinks just:

Provided that in making such direction the Central Board of Revenue may impose such conditions as it deems appropriate.

¹[(4) An application to the Central Board of Revenue under this section shall be presented to the Excess Profits Tax Officer before the expiry of the period specified in the notice issued under sub-section (1) of section 13 or of the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section, but in the case of an application under sub-section (1) of this section, if the person carrying on the business has made or is making an application under sub-section (3) of section 6 the application shall be presented to the Excess Profits Tax Officer before the expiry of forty-five days from the date on which the order of the Board of Referees disposing of the application under sub-section (3) of section 6 is communicated to the person who has made that application.]

Further powers of Central Board of Revenue to grant certain relief.

²[26A. (1) If on an application made to it through the Excess Profits Tax Officer, the Central Board of Revenue is satisfied that a person who in a chargeable accounting period ending on the 31st day of March 1946, carried on a business the profits of which for any chargeable accounting period are charged with excess profits tax,—

(i) incurred during the period commencing on the 1st day of April 1946 and ending on the 31st day of December 1947, in connection with that business,—

(a) expenditure on the removal of works constructed for protection against enemy attack;

(b) where under the orders of a competent authority the business was wholly or partly removed during the war, expenditure on again removing the business or part thereof;

(c) where any physical assets held for the purposes of the business were altered to adapt them to war conditions, expenditure on re-adapting them to normal requirements;

(d) expenditure in consequence of the termination of any contract for the supply of goods, materials or services, or the lease of buildings or machinery to him, where that contract is terminated by reason of the termination of a contract for the provision by him of goods, materials or services for the purposes of the war; or

¹ Ins. by s. 8 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

² Ins. by s. 17 of the Income-tax and Excess Profits Tax (Amendment) Act, 1947 (32 of 1947) (with effect from 31st March, 1947).

(ii) incurred during the period commencing on the 1st day of April, 1946 and ending on the 31st day of December, 1947, a loss on the sale of trading stock held on the 31st day of March, 1946 for the purposes of the business; or

(iii) incurred in any accounting period ending on or before the 31st day of March, 1946 in connection with that business any expenditure referred to in the sub-clauses of clause (i) which, except under the provisions of this sub-section, is not allowable, either wholly or partly, in computing the profits of such accounting period:—

the Central Board of Revenue may direct that such allowance as it thinks just shall be made in computing the profits of the business during the chargeable accounting period ending on the 31st day of March, 1946, and effect shall be given to such direction by repayment or otherwise, as the case may require:

Provided that in giving any such direction, the Central Board of Revenue may impose such conditions as it considers appropriate:

Provided further that where the applicant satisfies the Central Board of Revenue that it was not possible to complete any work referred to in sub-clauses (a), (b) and (c) of clause (i) within the period specified in that clause, the Central Board of Revenue may extend the said period to such date as it considers reasonable:

Provided further that, where any change has taken place in the persons carrying on the business, the persons carrying it on after the change shall have the same right to make an application under this sub-section in respect of any expenditure referred to in sub-clauses (b) and (c) of clause (i) as the persons previously carrying on the business would have had if there had been no such change.

(2) Where an accounting period included, but did not end on, the 31st day of March, 1946, all expenditure referred to in the sub-clauses of clause (i) of sub-section (1) which would, apart from the provisions of this sub-section and rule 11 of Schedule I, be allowable as a deduction in computing the profits of the said accounting period, shall be treated for the purposes of sub-section (1) as if it were incurred after that day, and if an application is made under this section, no deduction from, or in computing, the profits of any accounting period or chargeable accounting period shall be allowed in respect of such expenditure otherwise than under sub-section (1).

(3) Where a change takes place in the persons carrying on a business or a person carrying on a business, being a body corporate, becomes or ceases to be a subsidiary company or principal company within the meaning of sub-section (6) of section 9, and where except for the happening of that event relief would be allowable under this section, the Central Board of Revenue may, if it thinks fit, allow such relief under this section as it considers just, having regard to the extent to which the persons directly or indirectly interested in the business or body corporate, as the case may be, before the change remain interested therein after the change.]

Power to
make rules.

27. (1) The Central Board of Revenue may, subject to the control of the Central Government, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe the procedure to be followed on appeals, applications for rectification of mistakes, and applications for refunds;
- (b) provide for the adaptation to excess profits tax of any of the provisions of the Indian Income-tax Act, 1922, which are made applicable to excess profits tax by section 21; or of any rules made under any such provision;
- (c) provide in regard to companies whose business consists wholly or mainly in the dealing in or holding of investments, for the granting of exemption or relief from liability to excess profits tax of profits derived from investments in other companies the profits which have been subjected to excess profits tax in British India;
- (d) provide for any matter which by or under this Act is to be prescribed.

(3) The power to make rules conferred by this section shall be exercised in like manner as the power to make rules under section 59 of the Indian Income-tax Act, 1922.

SCHEDULE I.

[See section 2 (19).]

Rules for the computation of profits for purposes of Excess Profits Tax.

1. The profits of a business during the standard period, or during any chargeable accounting period, shall be separately computed, and shall, subject to the provisions of this Schedule, be computed on the principles on which the profits of a business are computed for the purposes of income-tax under section 10 of the Indian Income-tax Act, 1922:

²[Provided that any sums ³[(other than any interest paid by a firm to a partner of the firm)] excluded under the proviso to clause (iii) of sub-section (2) or clause (a) of sub-section (4) of that section from the allowances made in computing the profits of the business for the pur-

¹ For the Excess Profits Tax Rules, 1940, see Gazette of India, 1940, Pt. I, p. 1380.

² Ins. by s. 9 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

³ Ins. by s. 6 of the Excess Profits Tax (Amendment) Act, 1941 (11 of 1941) (with retrospective effect).

poses of income-tax shall, if paid, be included in those allowances when computing the profits of the business for the purposes of excess profits tax:]

XI of 1922.

Provided ¹[further] that where the profits during any standard period have already been determined for the purpose of an assessment under the Indian Income-tax Act, 1922, such profits as so determined shall, subject to the adjustments required by this Schedule, be taken as the profits during that period for the purpose of excess profits tax:

Provided further that where a standard period or chargeable accounting period is not an accounting period, the profits or losses of the business during any accounting periods wholly or partly included within the standard period or chargeable accounting period shall be so computed as aforesaid, and such division and apportionment to specific periods of those profits or losses and such aggregation of those profits and losses, or any apportioned part thereof shall be made as appears necessary to arrive at the profit during the standard period or chargeable accounting period: and any such apportionment shall be made in proportion to the number of months or fractions of months in the respective periods unless the Excess Profits Tax Officer, having regard to any special circumstances, otherwise directs.

XI of 1922,
VII of 1939.

2. The profits of a business during the standard period shall be computed on the same basis and in the same manner as the profits of that business are under the Indian Income-tax Act, 1922, as amended by the Indian Income-tax (Amendment) Act, 1939, computed for the chargeable accounting period, notwithstanding that the Indian Income-tax (Amendment) Act, 1939 may not have been in force in the standard period.

3. (1) The principle of adding the allowance for depreciation for any one period to the allowance for depreciation for any subsequent period and deeming it to be part of the allowance for such subsequent period shall not be followed.

(2) No allowance shall be made for any loss other than a loss sustained in a business to which this Act applies.

XI of 1922.

(3) Nothing in this Act shall be construed as permitting the application, in computing profits for the purposes of the excess profits tax of the provisions of sub-section (2) of section 24 of the Indian Income-tax Act, 1922.

4. (1) Income received from investments shall be included in the profits in the cases and to the extent provided in sub-rules (2), ¹[(2A)] and (4) of this rule and not otherwise.

XI of 1922.

(2) In the case of the business of a building society, or of a money-lending business, banking business, insurance business or business consisting wholly or mainly in the dealing in or holding of investments, the profits shall include all income received from investments, whether or not such income is included in the profits charged under section 10 of the Indian Income-tax Act, 1922, or is charged under any other

¹ Ins. by s. 9 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

section of that Act, or has been subjected to deduction of tax at source or is free of or exempt from income-tax.

¹[(2A) In the case of a business part of which consists in banking, insurance or dealing in investments, not being a business to which sub-rule (2) of this rule applies, the profits shall include all income received from investments held for the purposes of that part of the business, being income to which the persons carrying on the business are beneficially entitled.]

(3) Notwithstanding anything contained in sub-rule (2) ¹[or (2A)], where the profits of a subsidiary company are under the provisions of section 9 to be included in the profits of the principal company for the purposes of assessment to excess profits tax, dividends from the subsidiary company out of such profits shall not also be included in the profits of the principal company.

(4) In the case of a business which consists wholly or partly in the letting out of property on hire, the income from the property shall be included in the profits of the business whether or not it has been charged to income-tax under section 9 of the Indian Income-tax Act, 1922, or **XI** of 1922, under any other section of that Act.

(5) Where the person carrying on a business is the beneficial owner of any investments, the income from which is by virtue of the provisions of this rule not to be taken into account in computing the profits of the business, and a deduction would, apart from the provisions of this rule, fall to be made in respect of interest on borrowed money, the deduction (if any) to be made in respect of that interest shall be computed as if the principal of the borrowed money were reduced by the value of those investments:

Provided that where the person carrying on the business is not a company, no such reduction shall be deemed to be made in the principal of any borrowed money in respect of any investments unless the investments are mortgaged, charged or pledged as security for the repayment of that money and interest thereon.

5. If at any time after the close of the standard period any increase in the capital employed in a business has been effected by means of a loan from a bank carrying on a *bona fide* banking business, or by means of a public issue of debentures secured on the property of the company, the interest on so much of the loan or debentures as has been utilised in effecting the increase in the capital shall not be deducted in computing the profits for the purposes of excess profits tax and, notwithstanding the provisions of rule 2 of Schedule II, that amount of such loan or debentures shall not be deducted in arriving at the amount of the capital employed in the business.

²[5A. (7) In computing for any chargeable accounting period ending after the end of March, 1941, and in relation thereto for the stand-

¹ Ins. by s. 9 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

² Ins. by s. 8 of the Excess Profits Tax (Second Amendment) Act, 1941 (24 of 1941).

ard period, if any, the profits of a business other than a business to which sub-rule (2) of rule 4 of this Schedule applies, or the profits of a part of a business other than a part of a business to which sub-rule (2A) of the said rule applies, no deduction shall be made in respect of interest on borrowed money or in respect of any other consideration given for the use of borrowed money:

Provided that, as respects any such chargeable accounting period which commences before the said end of March, the application of this rule shall be subject to the provisions of section 7A of this Act:

Provided further that this rule shall not apply to the computation of profits of any business for any chargeable accounting period the standard profits for which are ascertained by reference to the minimum amount specified in sub-section (4) of section 6 of this Act:

Provided further that where a direction has been given by a Board of Referees under sub-section (3) of section 6, or by the Central Board of Revenue under sub-section (1) of section 26 of this Act, that the standard profits shall be computed as if the profits during the standard period were such greater amount as it thinks just, such amount shall be increased by the amount of the interest on or other consideration for the borrowed money during the standard period.

(2) In this rule and in rule 2A of the Second Schedule "borrowed money" means borrowed money which, apart from the provisions of the said rule 2A, would have been deductible in computing capital.]

6. No deduction shall be made on account of liability to pay, or payment of, income-tax, super-tax, or excess profits tax.

7. ¹[(1) In the case of a business carried on, in any accounting period which constitutes or includes a chargeable accounting period, by a company the directors whereof have throughout that accounting period a controlling interest therein—

(a) in computing the profits for that accounting period; and

(b) if the standard profits of the business are computed by reference to the profits of a standard period, also in computing, in relation to any such chargeable accounting period, the profits for the standard period, no deduction shall be made in respect of directors' remuneration.]:

(2) ²[In sub-rule (1) of this rule] the expression "directors' remuneration" does not include—

(a) the remuneration of any director who is required to devote substantially the whole of his time to the service of the company in a managerial or technical capacity and is not the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect

¹ Subs. for the original sub-rule by s. 9 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from the 13th April, 1940).

² Subs. for "In this rule", *ibid* (with effect from the 13th April, 1940).

means, to control, more than five per cent. of the ordinary share capital of the company, or

- (b) the remuneration of any managing agent where such remuneration is included in the profits of the managing agent's business for the purposes of excess profits tax.

¹[(3) If in the case of a business carried on by a company in any accounting period which constitutes or includes a chargeable accounting period, the directors of the company—

- (a) have during any part of that accounting period, or
- (b) had during the whole or any part of any previous accounting period which includes the whole or any part of any chargeable accounting period or the whole or any part of the standard period (if any),

a controlling interest therein, and the case is not one to which sub-rule (7) of this rule applies, then, except in so far as the Central Board of Revenue otherwise directs, no deduction shall be made in respect of directors' remuneration either in computing the profits for the first-mentioned accounting period or in computing in relation to any chargeable accounting period wholly or partly included in that accounting period, the profits of the standard period (if any).]

8. In the case of a business carried on by a company, if the standard profits of the company are computed by reference to the profits during a standard period, no deduction shall be allowed in respect of remuneration paid to a managing agent in excess of the amount which would have been payable to that managing agent if the agreement in force in the standard period had been in force in the chargeable accounting period, except where such remuneration is subjected to excess profits tax in the hands of the managing agent.

9. Where the performance of a contract extends beyond the accounting period, there shall (unless the Excess Profits Tax Officer, owing to any special circumstances, otherwise directs) be attributed to the accounting period such proportion of the entire profits or loss which has resulted, or which it is estimated will result, from the complete performance of the contract as is properly attributable to the accounting period, having regard to the extent to which the contract was performed therein:

Provided that when any such contract has been completed and the profits have been finally ascertained, if the aggregate of the amounts attributed to previous accounting periods exceeds the profit, as finally ascertained, from the complete performance of the contract; an adjustment shall be made to reduce the amounts so attributed to the various chargeable accounting periods to the amount of the profits as finally ascertained.

¹ Added by s. 9, of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

10. In respect of any building erected on or after the 1st day of September, 1939, which during any chargeable accounting period has ceased to be required for the purposes of the business or has been sold, any amount by which the value of the building at the date when it ceased to be required for the purposes of the business or the price obtained for the building, as the case may be, falls short of the written down value of the building shall be allowed as a deduction in arriving at the profits of that chargeable accounting period.

¹[11. Where in respect of any accounting period a deduction would, apart from the provisions of this rule, be allowable in computing profits, and, in the opinion of the Excess Profits Tax Officer, the deduction does not represent a sum reasonably and properly attributable to that accounting period, only such part of the deduction shall be allowable as a deduction for that period as appears to the Excess Profits Tax Officer to be reasonably and properly attributable to that period, and any balance of the deduction shall be treated as attributable to such other accounting period or periods (whether or not they include, or fall wholly or partly within, the standard period, if any, or any chargeable accounting period) as the Excess Profits Tax Officer thinks proper:

²[Provided that where any loss or expenditure incurred during the period commencing on the 1st day of April 1946 and ending on the 31st day of December 1947 is reasonably and properly attributable, wholly or partly, to any chargeable accounting period or standard period, such deduction as appears to the Excess Profits Tax Officer to be reasonable shall be allowed in computing the profits of such chargeable accounting period or standard period: and any relief accruing from such deduction shall be given by repayment or otherwise, as the case may require.]

Any person who is dissatisfied with a determination of the Excess Profits Tax Officer under this rule may, at any time before the expiry of forty-five days from the date on which such determination is communicated to him, appeal to the Board of Referees through the Excess Profits Tax Officer.]

³[12. (1) In computing the profits of any chargeable accounting period no deduction shall be allowed in respect of expenses in excess of the amount which the Excess Profits Tax Officer considers reasonable and necessary having regard to the requirements of the business and, in the case of directors' fees or other payments for services, to the actual services rendered by the person concerned:

Provided that no disallowance under this rule shall be made by the Excess Profits Tax Officer unless he has obtained the prior authority of the Commissioner of Excess Profits Tax,

¹ Ins. by s. 9 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April 1940).

² Ins. by s. 18 of the Income-tax and Excess Profits Tax (Amendment) Act, 1947 (22 of 1947) (with effect from 31st March 1947).

³ Ins. by s. 8 of the Excess Profits Tax (Second Amendment) Act, 1941 (24 of 1941).

(2) Any person who is dissatisfied with the decision of the Excess Profits Tax Officer under this rule may appeal in the prescribed time and manner to the Appellate Tribunal.]

¹[(3) In relation to chargeable accounting periods ending after the 31st day of December, 1942, the Central Government may make rules for determining the extent to which deductions shall be allowed in respect of bonuses or commissions paid.]

SCHEDULE II.

[See section 2 (3).]

Rules for computing the average amount of capital.

1. (1) Subject to the provisions of this Schedule the average amount of the capital employed in a business (so far as it does not consist of money) shall be taken to be—

(a) so far as it consists of assets acquired by purchase on or after the commencement of the business, the price at which those assets were acquired, subject to the deductions hereafter specified;

(b) so far as it consists of assets being debts due to the person carrying on the business, the nominal amount of those debts, subject to the said deductions;

(c) so far as it consists of any other assets which have been acquired otherwise than by purchase as aforesaid, the value of the assets when they became assets of the business, subject to the said deductions.

(2) The price or value of any assets other than a debt shall be subject to such deductions for depreciation as are necessary to reduce the asset to its written down value ²[and to such other deductions in respect of reduced values of assets as are allowable in computing profits for the purposes of income-tax], and in the case of a debt, the nominal amount of the debt shall be subject to any deduction which has been allowed in respect thereof for income-tax purposes.

(3) Where the price of any asset has been satisfied otherwise than in cash, the then value of the consideration actually given for the asset shall be treated as the price at which the asset was acquired.

2. (1) Any borrowed money and debts shall be deducted, ³[and in particular there shall be deducted any debts incurred in respect of the business for income-tax or super-tax or excess profits tax, or for advance

¹ Ins. by s. 4 of the Excess Profits Tax Ordinance, 1943 (16 of 1943).

² Ins. by s. 10 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

³ Subs. for "and in particular any debt, for income-tax or super-tax or for excess profits tax in respect of the business shall be deducted" by s. 8 of the Indian Finance Act, 1944.

XI of 1922.² payments due under any provision of the Indian Income-tax Act, 1922 or for any further sum payable in relation to excess profits tax under
 XVI of 1943. section 2 of the Excess Profits Tax Ordinance, 1943:]

Provided that any such debt for income-tax or super-tax or excess profits tax shall, for the purposes of this Schedule, be deemed to have become due—

(a) in the case of income-tax and super-tax, on the last day of the period of time within which the tax is payable under
 XI of 1922. section 45 of the Indian Income-tax Act, 1922;

(b) in the case of excess profits tax, on the first day after the end of the chargeable accounting period in respect of which the tax is assessable notwithstanding that the excess profits tax may not have been assessed until after that date.

XI of 1922. ¹(c) in the case of any advance payment due under any provision of the Indian Income-tax Act, 1922, on the date on which, under the provisions of that section, the payment first became due;

(d) in the case of any further sum payable in relation to excess profits tax under section 2 of the Excess Profits Tax Ordinance, 1943, on the date on which, under the provisions of that section, the further sum became payable.]
 XVI of 1943.

²[The debts to be deducted under this sub-rule shall include any such sums in respect of accruing liabilities as are allowable as a deduction in computing profits for the purposes of excess profits tax or would have been so allowable if the period for which the amount of capital is being computed had been a chargeable accounting period; and the said sums shall be deducted notwithstanding that they have not become payable.]

(2) Where any debt for the excess profits tax assessable in respect of any period is to be deducted under this rule, the amount thereof shall not be reduced as the result of any relief to be given in respect of a deficiency of profits occurring in any subsequent period, and the amount of any such relief shall be treated as having become an asset of the business on the first day after the end of the chargeable accounting period in which the deficiency occurred.

³[2A. In computing for any chargeable accounting period ending after the end of March, 1941, and in relation thereto for the standard period, if any, the average capital of a business other than a business to which sub-rule (2) of rule 4 of the First Schedule applies, or the average capital of a part of a business other than a part of a business to which sub-rule (2A) of the said rule applies, no deduction shall be made in respect of borrowed money:

¹ Ins. by s. 8 of the Indian Finance Act, 1944.

² Ins. by s. 10 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

³ Ins. by s. 9 of the Excess Profits Tax (Second Amendment) Act, 1941 (24 of 1941).

Provided that, as respects any such chargeable accounting period which commences before the said end of March, the application of this rule shall be subject to the provisions of section 7A of this Act:

Provided further that the same deduction shall be made in respect of accruing liabilities for interest as would have been made if this rule had not been enacted.]

3. ¹[(7)] Any investments the income from which is by virtue of the provisions of the First Schedule not to be taken into account in computing the profits of the business, any any moneys ²[or as regards any chargeable accounting period ending after the 31st day of December, 1942, any trading stock or stock of raw materials] not required for the purposes of the business, shall be left out of account, but where any investments in the beneficial ownership of the person carrying on the business are so left out of account, the sum (if any) to be deducted under ³[rule 2 of this Schedule] in respect of borrowed money shall be computed as if the principal of the borrowed money were reduced by the value of those investments:

Provided that where the person carrying on the business is not a company, no reduction shall be deemed to be made in the principal of any borrowed money in respect of any investments unless the investments are mortgaged, charged or pledged as security for the repayment of that money and the interest thereon.

²[(2) The Central Government may make rules defining for the purposes of this rule the principles to be followed in leaving out of account trading stock and stocks of raw materials.]

4. Notwithstanding anything contained in rule 3, in the case of the business of shipping, to which this Act applies, the sale proceeds of any tonnage sold or the amount of compensation in respect of loss of ships or the amount of accumulation of reserves, whether invested or not, shall be taken into account in computing the average amount of capital employed in such business:

Provided that any income received from investment of such funds shall be included in computing profits for purposes of the excess profits tax.

5. For the purpose of ascertaining the average amount of capital employed in a business during any period, the profits or losses made in that period shall except so far as the contrary is shown, be deemed—

- (a) to have accrued at an even rate throughout the period; and
- (b) to have resulted, as they accrued, in a corresponding increase or decrease, as the case may be, in the capital employed in the business.

¹ Rule 3 was re-numbered¹ as sub-rule (1) of that rule by s. 5 of the Excess Profits Tax Ordinance, 1943 (16 of 1943).

² Ins., *ibid.*

³ Subs. for "the last preceding rule" by s. 3 and Sch. II of the Repealing and Amending Act, 1945 (6 of 1945).

6. Where, in accordance with the ¹[second or third proviso] to section 5 of this Act, this Act is applicable to part only of a business, the capital employed in that part shall be computed separately from any other capital of the person carrying on the business, and all references to capital employed in a business shall be construed as references to capital employed in that part of the business only.

²[7. (1) If—

(a) the Central Board of Revenue is satisfied, as respects any assets of any business the standard profits of which are computed by reference to the profits of a standard period, that during that period or any part thereof those assets were inherently unproductive, and

(b) an application that this rule shall have effect is made through the Excess Profits Tax Officer to the Central Board of Revenue by the person carrying on the business.

then, in computing the average amount of the capital employed in the business in the standard period and in all chargeable accounting periods, those assets, and any other assets of the business, shall be treated as not having been assets thereof during any part of the period during which, in the opinion of the Central Board of Revenue, they were inherently unproductive:

Provided that in the case of a business the standard profits of which depend directly or indirectly upon a direction of the Board of Referees under sub-section (3) of section 6, or of the Central Board of Revenue under sub-section (1) of section 26 of this Act the provisions of this rule shall have effect to such extent only as the Central Board of Revenue thinks proper:

Provided further that an application to the Central Board of Revenue under this rule shall be presented to the Excess Profits Tax Officer before the expiry of the period specified in the notice issued under sub-section (1) of section 13 of this Act or of the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section.

(2) Where sub-rule (1) of this rule has effect on the application of the person carrying on any business, any computation of capital of the business made before the making of the application, and any assessment affected by that computation shall be revised accordingly.]

SCHEDULE III.

[See section 9 (7).]

Rules for determining the amount of capital held by a company through other companies.

1. Where, in the case of a number of companies, the first directly owns ordinary share capital of the second and the second directly owns

* ¹ Subs. for "second proviso" by s. 9 of the Excess Profits Tax (Second Amendment) Act, 1941 (24 of 1941).

² Ins. by s. 10 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940) (with effect from 13th April, 1940).

ordinary share capital of the third, then, for the purposes of this Schedule, the first shall be deemed to own ordinary share capital of the third through the second and, if the third directly owns ordinary shares capital of a fourth, the first shall be deemed to own ordinary share capital of the fourth through the second and third, and the second shall be deemed to own ordinary share capital of the fourth through the third, and so on.

2. In this Schedule—

(a) any number of companies of which the first directly owns ordinary share capital of the next and the next directly owns ordinary share capital of the next but one and so on, and, if they are more than three, any three or more of them, are referred to as “a series”;

(b) in any series—

(i) that company which owns ordinary share capital of another through the remainder is referred to as “the first owner”;

(ii) that other company the ordinary share capital of which is so owned is referred to as “the last owned company”;

(iii) the remainder, if one only, is referred to as an “intermediary” or, if more than one, is referred to as a “chain of intermediaries”;

(c) a company in a series which directly owns ordinary share capital of another company in the series is referred to as an “owner”;

(d) any two companies in a series of which one owns ordinary share capital of the other directly, and not through one or more of the other companies in the series, are referred to as being directly related to one another.

3. Where every owner in a series owns the whole of the ordinary share capital of the company to which it is directly related, the first owner shall be deemed to own through the intermediary or chain of intermediaries the whole of the ordinary share capital of the last owned company.

4. Where one of the owners in a series owns a fraction of the ordinary share capital of the company to which it is directly related, and every other owner in the series owns the whole of the ordinary share capital of the company to which it is directly related, the first owner shall be deemed to own that fraction of the ordinary share capital of the last owned company through the intermediary or chain of intermediaries.

5. Where—

(a) each of two or more of the owners in a series owns a fraction, and every other owner in the series owns the whole, of

the ordinary share capital of the company to which it is directly related; or

- (b) every owner in a series owns a fraction of the ordinary share capital of the company to which it is directly related;

the first owner shall be deemed to own through the intermediary or chain of intermediaries such fraction of the ordinary share capital of the last owned company as results from the multiplication of those fractions.

6. Where the first owner in any series owns a fraction of the ordinary share capital of the last owned company in that series through the intermediary or chain of intermediaries in that series, and also owns another fraction or other fractions of the ordinary share capital of the last owned company, either—

- (a) directly; or

- (b) through any intermediary or intermediaries which is not a member or are not members of that series; or

- (c) through a chain or chains of intermediaries of which one or some or all are not members of that series; or

- (d) in a case where the series consists of more than three companies, through an intermediary or intermediaries which is a member or are members of the series, or through a chain or chains of intermediaries consisting of some but not all of the companies of which the chain of intermediaries in the series consists;

then, for the purpose of ascertaining the amount of the ordinary share capital of the last owned company owned by the first owner, all those fractions shall be aggregated and the first owner shall be deemed to own the sum of those fractions.

THE INDIAN FINANCE ACT, 1940.

ACT No. XVI OF 1940.¹

[6th April, 1940.]

An Act * * * * to fix rates of income-tax and super-tax.

WHEREAS it is expedient * * * * to fix rates of income-tax and super-tax;

It is hereby enacted as follows:—

Short title
and extent.

(2) It extends to the whole of India except the territories to which immediately before the 1st November 1936, were comprised in part B States.

- | | |
|-----------------------------------|--|
| 3. [Excise duty on sugar.] | } Rep. by the Repealing and
Amending Act, 1945 (VI of
1945). |
| 4. [Excise duty on motor spirit.] | |
| 5. [Import duty on motor spirit.] | |
| 6. [Inland postage rates.] | |

Income-tax
and super-
tax.

7. (1) Subject to the provisions of sub-section (2)—

- (a) income-tax for the year beginning on the 1st day of April, 1940, shall be charged at the rates specified in Part I of Schedule II to the Indian Finance Act, 1939;
- (b) rates of super-tax for the year beginning on the 1st day of April, 1940, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be the rates specified in XI of 1922. Part II of Schedule II to the Indian Finance Act, 1939;

Provided that in the case of an association of persons being a Co-operative Society, other than the Sanikatta Saltowners' Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1912, or under an Act of the Provincial Legislature II of 1912.

¹ For the Statement of Objects and Reasons, see Gazette of India, 1940, Pt. V p. 107.

The Act has been applied to—

the Darjeeling district, by the late Bengal Govt. Notification No. 6037-F. B., dated 23rd July, 1940;

partially excluded areas of the province of Madras, see Fort St. George Gazette Notification No. 13, dated 20th January, 1941;

all the partially excluded areas of the province of Orissa, by Orissa Regulation VI of 1941.

The Act came into force in the Chota Nagpur Division and the Santhal Parganas district on the 6th April, 1940, see s 3 of Bihar Regulation I of 1941.

² Certain words rep. by the Repealing and Amending Act, 1945 (6 of 1945).

³ Subs. by the A.O. 1948 for "the whole of British India".

governing the registration of Co-operative Societies, the rates of super-tax for the year beginning on the 1st day of April, 1940, shall be—

(1) On the first Rs. 25,000 of total income . . Nil

(2) On the balance of total income . . One anna in the rupee.

(2) In cases to which section 17 of the Indian Income-tax Act, 1922, applies, the tax chargeable shall be determined in accordance with the provisions of that section with reference to the rates imposed by sub-section (1).

(3) For the purpose of this section and of the rates of tax imposed by sub-section (1), the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922.

SCHEDULE I—Rep. by the Repealing and Amending Act, 1945 (VI of 1945).

THE NATIONAL SERVICE (EUROPEAN BRITISH SUBJECTS) ACT, 1940. ACT No. XVIII OF 1940¹.

[9th April, 1940.]

An Act to make certain provisions relating to service by European British subjects² [in the armed forces of the Crown and in civilian employment].

WHEREAS it is expedient to make certain provisions relating to service by European British subjects² [in the armed forces of the Crown and in civilian employment];

¹For the Statement of Objects and Reasons, see Gazette of India, 1940, Pt. V, p. 175.

The Act has been applied to the Darjeeling district with effect from 13th April, 1940, see Notification No. 108-P.D., dated 25th April, 1940, Calcutta Gazette, dated 2nd May, 1940.

After the 17th January, 1946, no person shall be liable to be called up for national service under this Act—see the National Service (European British Subjects) Termination of Calling-up Ordinance, 1946 (5 of 1946).

² Subs. for "in the armed forces of, or in a civil capacity under, the Crown" by s. 2 of the National Service (European British Subjects) Amendment Ordinance, 1940 (5 of 1940).

It is hereby enacted as follows:—

Short title
extent and
commence-
ment,

1. (1) This Act may be called the National Service (European British Subjects) Act, 1940.

(2) It extends to [all the Provinces of India], and applies also to European British subjects in any part of India.

(3) It shall come into force at once.

Definitions,

2. In this Act, unless there is anything repugnant in the subject or context,—

²(a), “competent authority” means, with reference to any person liable under this Act to be called up for national service, the General Officer Commanding-in-Chief, Army or Command, within whose area of command that person is for the time being resident, or any officer not below the rank of Brigadier subordinate to the said General Officer whom he may authorise to exercise his functions as competent authority in respect of any area in his area of command:

Provided that for the purposes of this clause, the area of command of the General Officer Commanding-in-Chief, Eastern Command, shall be deemed to include in addition to his actual area of command all that part of India lying to the east thereof and extending to the eastern frontier of India.]

(b) “European British subject” means any subject of His Majesty of European descent in the male line born, naturalised or domiciled in the British Islands or in any Dominion as defined in the Statute of Westminster, 1931, ²² or in any Colony except Ceylon; ^{5,c}

(c) “prescribed” means prescribed by rules made under this Act;

(d) “national service” means service in the armed forces of the Crown or ³[in a civilian capacity in pursuance of a notice issued under section 7.]

Liability to
be called up
for enquiry.

3. (1) Every male European British subject for the time being in India, not being—

(a) a person in holy orders, or a regular minister of any religious denomination, or

(b) a member of His Majesty’s regular Naval, Military or Air Forces, or a member of any Reserve of any such force

¹ Subs. by the A. O. 1948 for “the whole of British India”.

² Subs. by s. 2 of the National Service (European British Subjects) Amendment Ordinance, 1945 (38 of 1945) for the original clause as amended by s. 3 of the National Service (European British Subjects) Amendment Ordinance, 1940 (5 of 1940).

³ Subs. for “in any civilian capacity under the Crown” by s. 3 of Ordinance 5 of 1940.

who is liable under his terms of service in such Reserve to be called up for service at any time and not only on partial or general mobilisation, or

(c) a servant of the Crown, or

(d) a person not included in clause (c) who is serving in the service of a federal railway or an Indian State railway or a minor railway as defined in the Government of India Act, 1935.

shall be liable under this Act to be called up for * * * * national service.

(2) A person liable to be called up for ²[national service] under this Act shall remain so liable until he has completed his fiftieth year and no longer.

4. (1) The competent authority may, after consultation with the National Service Advisory Committee constituted under section. 5, cause to be served on any person, for the time being liable under this Act to be called up for ³[national service], a written notice (hereinafter referred to in this Act as a ⁴[preliminary notice]) stating that he is called up for enquiry into his fitness and availability for national service and requiring him to present himself to such person and at such place and at such time (not earlier than the seventh day after the date of the service of the notice) as may be specified in the notice, and to submit himself to examination by the National Service Advisory Committee constituted under section 5. Calling up
for enquiry.

(2) Where a notice under sub-section (1) has been duly served on any person, the competent authority may, at any time while that person remains liable under this Act to be called up for ³[national service] cancel the notice and cause to be served on him a further notice varying the original notice.

(3) A ⁴[preliminary notice] served on any person shall cease to have effect if, before the date on which he is thereby required to present himself, he ceases to be liable under this Act to be called up for ³[national service].

(4) Such travelling and other allowances as may be prescribed shall be paid by the competent authority to any person required to present himself in accordance with any notice under this section.

¹ The words "enquiry into his availability and fitness for" were rep. by s. 4 of the National Service (European British Subjects) Amendment Ordinance, 1940 (5 of 1940)

² Subs. for "enquiry", *ibid*.

³ Subs. for "enquiry" by s. 5, *ibid*.

⁴ Subs. for "calling up notice", *ibid*.

Determina-
tion of
question
whether a
person is
liable to be
called up
for national
service.

[4A. (1) If any question arises with respect to a person on whom it is proposed to serve a notice under sub-section (1) of section 4, or with respect to a person on whom a notice under sub-section (1) of section 4 has been served, whether such person is liable under this Act to be called up for national service, the competent authority shall, unless the question has proved capable of settlement by agreement, apply or cause an application to be made to the District Magistrate or to an officer specially empowered in this behalf by the Central Government in the area in which such person is for the time being present to have the matter determined, and such Magistrate or other officer, after hearing both parties to the question or giving them a reasonable opportunity of being heard, shall summarily determine the matter, and the decision of such Magistrate or other officer shall be final.

(2) A claim with respect to a person on whom a notice under sub-section (1) of section 4 has been served that he is not liable under this Act to be called up for national service shall be presented by the claimant to the competent authority, not later than the date on which the person concerned is required by the said notice to present himself for examination by the National Service Advisory Committee, and shall be accompanied by a statement of such claim in writing to the competent authority, and no such claim may be made at any other time or in any other manner.

(3) In determining any question referred to in sub-section (1) the fact that a person has registered himself as a European British subject under the provisions of the Registration (Emergency Powers) Act, 1940, or that he has, after a determination under section 4 of that Act, been registered as a European British subject under the provisions of that Act, shall be conclusive proof that such person is a European British subject for the purposes of this Act.]

National
Service Ad-
visory Com-
mittees.

5. (1) The Central Government shall constitute for such areas and in such places as it thinks fit committees (in this Act referred to as National Service Advisory Committees) to exercise the functions assigned to such committees by this Act.

(2) Each National Service Advisory Committee shall consist of not less than four members of whom one shall be an officer of one of His Majesty's Forces in India appointed by the competent authority, and the others shall be European British subjects, not being servants of the Crown, appointed by the Central Government.

(3) The Chairman of the Committee shall be appointed by the Committee.

(4) A National Service Advisory Committee shall have power to co-opt as additional members for such time or purpose as it thinks fit any persons qualified for appointment to the Committee by the Central Government.

¹ Ins. by s. 2 of the National Service (European British Subjects) Amendment Ordinance, 1941 (6 of 1941).

(5) A National Service Advisory Committee may meet at such times and places as it thinks fit and shall meet when required to do so by the Central Government or by the competent authority.

¹[(6) The Chairman of the Committee and any one other member of the Committee shall constitute a quorum.]

²[(7)] A National Service Advisory Committee shall have the powers of a Civil Court for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery of documents, and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

²[(8)] A National Service Advisory Committee may order any person called up for enquiry under sub-section (1) of section 4 to submit himself to be examined by a medical officer of the armed forces, and if he questions the decision of that officer, to appear before a medical board convened under military regulations.

6. The following shall be the functions of National Service Advisory Committees, namely:—

Functions of
National
Service
Advisory
Committees.

(a) when consulted by the competent authority, to advise that authority on the exercise of that authority's powers under sub-section (1) of section 4;

³[(b) to examine the case of any person ordered under section 4 to present himself for enquiry, and to report to the competent authority—

(i) whether such person is fit for service in the armed forces or is fit for service in a civilian capacity only, or in both,

(ii) whether such person is or is not available for national service (i.e., can be spared without detriment to the public interest from his existing employment),

(iii) where such person claims that he conscientiously objects to performing military service, whether the claim made is or is not established.]

(c) when consulted by the Central Government, to advise the Central Government on any matter arising out of this Act which the Central Government may refer or is required by this Act to refer to the Committee.

⁴6A. (1) If any person liable under this Act to be called up for national service claims that he conscientiously objects to performing

Conscientious
objection to
military service

¹ Ins. by s. 6 of the National Service (European British Subjects) Amendment Ordinance, 1940 (5 of 1940).

² Re-numbered, *ibid.*

³ Subs. for the original clause (b) by s. 7, *ibid.*

⁴ Ins. by s. 8, *ibid.*

military service, he shall, upon receipt of the preliminary notice issued under sub-section (1) of section 4 and not later than the date specified in that notice as the date on which he is to present himself for submission to examination by the National Service Advisory Committee, prefer such claim, in such form and with such particulars as may be prescribed, to the competent authority and the competent authority shall submit the claim to the National Service Advisory Committee.

(2) The National Service Advisory Committee shall record in writing a finding, with the reasons therefor, whether the claim is or is not established, and a copy of such finding shall be supplied to the claimant.

(3) If the National Service Advisory Committee finds that such claim is established the claimant shall not be liable to be called up for service in the armed forces of the Crown.

(4) Any claimant aggrieved by a finding of the National Service Advisory Committee that such claim is not established may, within seven days from the date on which he receives the copy of the finding, appeal to the Tribunal constituted under section 9, and, if that Tribunal reverses the finding of the National Service Advisory Committee, the claimant shall not be liable to be called up for service in the armed forces of the Crown.]

Calling-up
for service,

[7. (1) The competent authority may cause to be served on any person, who is liable under this Act to be called up for national service and whose case has been examined and reported on by the National Service Advisory Committee, a written notice (hereinafter referred to in this Act as a calling-up notice) stating that he is called up for service in such one of His Majesty's armed forces as may be specified in the notice, or for service in such civilian capacity whether under the Crown or otherwise as may be so specified, and requiring him to present himself at such place and time (not earlier than the seventh day after the date of the service of the notice) and to such authority as may be so specified; and, subject to the following provisions of this Act, the person upon whom the notice is served shall, when the notice states that he is called up for service in one of His Majesty's Forces, be deemed as from the day so specified to have been duly entered or enlisted for service in the force so specified, and, when the notice states that he is called up for service in a civilian capacity, be legally bound as from the day so specified to obey any directions given by the authority so specified as to his entering employment in a civilian capacity.

(2) A notice under sub-section (1) calling up a person for service in a civilian capacity shall be issued by the competent authority only at the request of, or otherwise in consultation with, an officer (or officers) empowered by the Central Government for the purposes of this sub-section to authorise such issue, and the authority specified in such notice as that to which the person called up shall present himself shall be such authority as that officer (or those officers) may direct.

* New sections 7 to 7C were subs. for the original section 7 by s. 9 of the National Service (European British Subjects) Amendment Ordinance, 1940 15 of 1940).

(3) Where a calling-up notice has been duly served on any person, the competent authority may, at any time while that person remains liable under this Act to be called up for national service, cancel the notice and caused to be served on him a further notice varying the original notice.

(4) A calling-up notice served on any person shall cease to have effect if, before the date on which he is thereby required to present himself, he ceases to be liable under this Act to be called up for national service.

(5) Such travelling and other allowances as may be prescribed shall be paid by the competent authority to any person required to present himself in accordance with a calling-up notice.

7A. (1) Where a calling-up notice is served under section 7 upon any person who has been reported by the National Service Advisory Committee to be not available for national service, a copy of the notice shall at the same time be served upon his employer, and that person himself or the employer of that person may, at any time before the seventh day from the service of the notice, appeal against the order to the Tribunal constituted under section 9.

Appeals in
connection
with calling-
up notices.

(2) Where a calling-up notice is served under section 7 upon any person who has been reported by the National Service Advisory Committee to be available for national service, a copy of the notice shall be served at the same time on his employer, if any, and that person himself or the employer, if any, of that person may, at any time before the seventh day from the service of the notice, appeal against the order to the Tribunal constituted under section 9.

(3) Any person, on whom a calling-up notice under section 7 is served, may, without prejudice to the provisions of sub-section (1) and sub-section (2), at any time before the seventh day from the service of the notice, appeal to the Tribunal constituted under section 9 on the ground that he is not fit for the service for which he is called up.

(4) Pending the disposal of an appeal under this section, the notice under section 7 shall be deemed to be suspended, and if the Tribunal decides that such person is not available for national service or is not fit for the service specified in the notice, as the case may be, the notice shall be cancelled.

7B. (1) When any person is called up under section 7 for service in a specified civilian capacity, his terms of service in such capacity shall be laid down by the competent authority in each case, subject to such conditions as may be prescribed, and such conditions may provide for the preservation of any rights which the person called up may have under any provident or superannuation fund or other scheme for the benefit of employees maintained in connection with the employment he relinquishes.

Terms of
service of
persons
entering
civilian em-
ployment.

(2) Such person himself, or the employer under whom he enters employment in pursuance of the notice issued under section 7, may appeal to the Tribunal constituted under section 9 against any decision

of the competent authority under sub-section (1), and the decision of the said Tribunal shall be final; but pending the disposal of any such appeal the notice under section 7 shall, unless the competent authority otherwise directs, continue to be of full force and effect.

Preservation
of certain
rights of
persons
called up
for service
in His
Majesty's
Forces.

7C. When any person called up under section 7 for service in one of His Majesty's Forces has any rights under any provident or superannuation fund or other scheme for the benefit of employees maintained in connection with the employment he relinquishes, he shall continue so long as he remains in His Majesty's Forces [or in any other employment under the Crown to which he may be temporarily assigned while serving in those Forces] to have in respect of such fund or scheme such rights as may be prescribed.]

Reinstatement.

8. ²[(1)] It shall be the duty of any employer by whom a person who has been ²[called up under this Act for national service], or by whom a European British subject who has been called out for service in the Reserve of His Majesty's regular Naval, Military or Air Forces at any time after the 2nd day of September, 1939, and before the termination of hostilities, or by whom a person subject to this Act who with the consent of his employers was between the 2nd day of September, 1939, and the coming into force of this Act granted an emergency commission or enlisted in His Majesty's armed forces or accepted for training as a cadet at an officers' training school, was employed, to reinstate him in his employment ⁴[at the termination of his national service or service in the armed forces or training as a cadet where such training is not followed by service in the armed forces, as the case may be] in an occupation and under conditions not less favourable to him than those which would have been applicable to him ⁵[had his employment not been so interrupted]:

Provided that if the employer refuses to reinstate such person, or denies his liability to reinstate such person or if for any reason the reinstatement of such person is represented by the employer to be impracticable, either party may refer the matter to a tribunal constituted under section 9 and that tribunal, shall, after consideration of the matter, exempt the employer from the provisions of this section, or require him to re-employ such person ⁷* * * * on such terms as it thinks suitable, or require him to pay to such person ⁷* * * a sum in compensation for failure to re-employ not exceeding an amount

to some of the provisions of the National Service (European British Subjects) Amendment Ordinance, 1945 (No. 2 of 1945), with retrospective effect.

S. 8 was re-numbered as sub-section (1) of that section by a 3 of the National Service (European British Subjects) Amendment Ordinance, 1941 (6 of 1941).

Subs. for "taken into national service on the advice of a National Service Advisory Committee" by "of the National Service (European British Subjects) Amendment Ordinance, 1940 (15 of 1940)".

Subs. for "that the termination of hostilities" by "the Ordinance of 1945".

Subs. for "had he not been so taken into service as a soldier" by "had he not been so taken into service as a member of the armed forces".

Subs. for "Provided that if for any reason the reinstatement of such person" by "Provided that if for any reason the reinstatement of such person is represented by the employer to be impracticable".

The words "members" were inserted in the National Service (European British Subjects) Amendment Ordinance, 1945 (No. 2 of 1945).

equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer; and if any employer fails to obey the order of the tribunal, he shall be punishable with a fine which may extend to one thousand rupees; and the Court by which an employer is convicted under this section may order him (if he has not already been so required by the tribunal) to pay the person whom he has failed to re-employ a sum not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer, and any amount so required by the tribunal to be paid or so ordered by the Court to be paid shall be recoverable as if it were a fine imposed by such Court:

Provided further that in any proceedings under this section it shall be a defence for an employer to prove that the person formerly employed by him did not apply to the employer for reinstatement within a period of two months ¹[from the termination of his national service, or service in the armed forces or training as a cadet where such training is not followed by service in the armed forces, as the case may be].

²[(2) The duty imposed by sub-section (1) upon an employer to reinstate in his employment a person such as is described in that sub-section shall attach to an employer who before such person is actually called up or taken into service terminates his employment in circumstances such as to indicate an intention to evade the duty imposed by that sub-section, and such intention shall be presumed until the contrary is proved if the termination of employment takes place after the issue of a notice under sub-section (1) of section 4 upon such person.]

³[(3) The duty imposed by sub-section (1) upon an employer to reinstate in his employment a person such as is described in that sub-section shall not be extinguished or affected by the fact that such person is, while serving in the capacity by virtue of which such duty was incurred by the employer, temporarily assigned to any employment under the Crown; nor shall any such assignment be deemed to have terminated or interrupted his service in the capacity by virtue of which such duty was incurred by the employer.]

9. (1) The Central Government shall constitute for such areas and ⁴Tribunals in such places as it thinks fit tribunals to hear and decide any matters referred to it under the proviso to section 8 ⁵[and any appeals made to it under sub-section (4) of section 6A or section 7A or section 7B];

(2) Each tribunal shall consist of three members to be nominated by the Central Government, of whom one who shall be Chairman of

¹ Subs. by s. 3 of the National Service (European British Subjects) Amendment Ordinance, 1941 (6 of 1941) for "from the termination of the national service [for which he was called up under this Act]", the words within brackets having previously been subs. by s. 10 of the National Service (European British Subjects) Amendment Ordinance, 1940 (5 of 1940), for the original words "into which he was taken on the advice of a National Service Advisory Committee".

² Ins. by s. 3 of Ordinance 6 of 1941.

³ Ins. by s. 3 of the National Service (European British Subjects) Amendment Ordinance, 1945 (2 of 1945) (with retrospective effect).

⁴ Ins. by s. 11 of Ordinance 5 of 1940.

the tribunal shall be a member of a Civil Service of the Crown not lower in status than a District and Sessions Judge, one shall be a military officer not below the rank of Brigadier, and one shall be a European British subject, not being a servant of the Crown.

(3) No person serving as a member of a National Service Advisory Committee constituted under section 5 shall while so serving be a member of a tribunal.

(4) A tribunal may meet at such times and places as it thinks fit and shall meet when required to do so by the competent authority.

¹[(5) The Chairman of the Tribunal and any one other member of the Tribunal shall constitute a quorum.]

²[(6)] A tribunal shall have the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898. V of 1898.

Penalties
and proce-
dure.

10. (1) Whoever wilfully fails to comply with any notice issued under section 4 ³[or section 7] or with any order given under ⁴[sub-section (8) of section 5, or with any direction given by the authority specified in a notice issued under section 7 as to his entering employment in a civilian capacity], shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

³[(2) Whoever having entered civilian employment in pursuance of a direction given by the authority specified in a notice issued under section 7, leaves that employment without the permission of the competent authority shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(3) Whoever, being an employer under whom any person enters employment in a civilian capacity in pursuance of a notice issued under section 7, fails to comply in all respects with the terms of service laid down under section 7B in respect of such person, shall, without prejudice to any civil liability incurred by such failure, be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.]

⁵[(4)] No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

¹ Ins. by s. 11 of the National Service (European British Subjects) Amendment Ordinance, 1940 (5 of 1940).

² Re-numbered, *ibid.*

³ Ins. by s. 12, *ibid.*

⁴ Subs. for "sub-section (7) of sections 5, or sub-section (1) of section 7" *ibid.*

⁵ Re-numbered, *ibid.*

¹[11. (1) Any notice to be served on any person for the purposes of Notices, this Act may be sent by post addressed to that person at his last known address.

(2) No notice purporting to have been issued under this Act shall be deemed to be, or at any time to have been, invalid for any purpose on the ground only that the authority issuing it had not jurisdiction or command over the area in which the person to whom the notice was directed was for the time being resident.]

²[11A. No suit or other proceeding shall lie in any Court in respect of anything done or in good faith intended to be done under this Act]. Bar of legal proceedings.

12. (1) The Central Government may, by notification in the official Gazette, make ³rules for the purpose of giving effect to the provisions of this Act. Power to make rules.

(2) Without prejudice to the generality of the foregoing power, the Central Government may make rules prescribing the forms of the notices referred to in sub-section (1) of section 4 ⁴[and sub-section (1) of section 7], the amount and manner of payment of the allowances referred to in sub-section (4) of section 4 ⁴[and sub-section (5) of section 7, the form of and the particulars to be contained in a claim preferred under section 6A, the conditions referred to in sub-section (1) of section 7B, the rights to be prescribed under section 7C]; and the procedure to be followed ⁵[in appeals under sub-section (4) of section 6A or section 7A or section 7B or references under the proviso to section 8 to a Tribunal].

⁴[(3) In making any rule under this section the Central Government may provide that a contravention of the rule shall be punishable with imprisonment for any term not exceeding six months, or with fine not exceeding one thousand rupees, or with both.]

13. Nothing in this Act shall apply to any person—

Act not to apply to certain persons.

- (a) for the time being confined in a prison or a lunatic asylum,
- or
- (b) who is under the age of eighteen or over the age of fifty.

¹ Subs. by s. 3 of the National Service (European British Subjects) Amendment Ordinance, 1945 (38 of 1945).

² Ins. by s. 13 of the National Service (European British Subjects) Amendment Ordinance, 1940 (5 1940).

³ For the National Service (European British Subjects) Rules, 1940, see Gazette of India, 1940, Extraordinary, p. 475.

⁴ Ins. by s. 14 of Ordinance 5 of 1940.

⁵ Sub. for "in references to a Tribunal under the proviso to section 8", *ibid.*

THE DRUGS ACT, 1940.

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THE SCHEDULE.—Standards to be complied with by imported drugs
and by drugs manufactured for sale, sold, stocked or exhibited
for sale, or distributed.

included areas in the Province of
dated the 27th August, 1941.

British India.

of 1943 for "the whole of British India."

Chapter IV shall take effect in the Provinces of Delhi, Ajmer-Merwara and Coorg
as the date from which (1) Chapter III shall take effect and
April, 1941, as the date from which (1) Chapter III shall take effect and
Gazette of India, 1940, Pt. I, p. 1349.

(Chapter I.—Introductory.)

ACT No. XXIII OF 1940.¹

[10th April, 1940.]

An Act to regulate the import, manufacture, distribution and sale of drugs.

WHEREAS it is expedient to regulate the import into, and the manufacture, distribution and sale in ^{India} ~~the Provinces~~ of drugs;

AND WHEREAS the Legislatures of all ^{States} ~~the Provinces~~ have passed resolutions in terms of section 103 of the Government of India Act, 1935, 26 Geo. 5, in relation to such of the above-mentioned matters and matters ancillary ^{c. 2} thereto as are enumerated in List II of the Seventh Schedule to the said Act:

It is hereby enacted as follows:—

CHAPTER I.

INTRODUCTORY.

Short title
extent and
commence-
ment.

1. (1) This Act may be called the Drugs Act, 1940.

(2) It extends to ^{whole} ~~all the Provinces~~ of India, ^{& Kashmir} except the State of Jammu

(3) It shall come into force at once; but Chapter III shall take effect only from such 'date as the Central Government may, by notification in the official Gazette, appoint in this behalf, and Chapter IV shall take effect in a particular Province only from such 'date as the Provincial Government may, by like notification, appoint in this behalf.

Application
of other laws
not barred.

2. The provisions of this Act shall be in addition to, and not in derogation of, the Dangerous Drugs Act, 1930, and any other law for ^{II} of 1930, the time being in force.

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

(a) "the Board" means the Drugs Technical Advisory Board constituted under section 5;

¹ For the Statement of Objects and Reasons, see Gazette of India, 1940, Pt. V, p. 34; for the Report of the Select Committee, see *ibid*, p. 143.

This Act has been applied to all the partially excluded areas in the Province of Orissa, see Orissa Govt. notification No. 3353-L.S.G., dated the 25th August, 1941.

² Subs. by the A.O. 1948 for "British India".

³ Subs. by the A.O. 1948 for "the whole of British India".

⁴ The 1st April, 1947 as the date from which (1) Chapter III shall take effect and (2) Chapter IV shall take effect in the Provinces of Delhi, Ajmer-Merwara and Coorg, see Gazette of India, 1946, Pt. I, p. 1349.

(b) 'drug' includes --

(i) all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or or animals other than medicines and substances exclusively used or prepared for use in accordance with the Ayurvedic or Unani systems of medicine; and

(ii) such substances (other than food) intended to affect the structure or any function of the human body or intended to be used for the destruction of vermins or insects which cause disease in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette;

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(bbb) 'manufacture' in relation to any drug includes any process or part of a process for making altering, ornamenting, finishing, packing, labelling, breaking up or otherwise treating or adopting any drug with a view to its sale and distribution but does not include the compounding or dispensing or the packing of any drug in the ordinary course of retail business and 'to manufacture'

XI/55

assumption
to poison-
s substan-

CHAPTER II.

THE DRUGS TECHNICAL ADVISORY BOARD, THE CENTRAL DRUGS LABORATORY AND THE DRUGS CONSULTATIVE COMMITTEE.

5. (1) The Central Government shall, as ^{soon} as may be, constitute a Board (to be called the Drugs Technical ^{shale} Advisory Board) to advise the Central Government and the Provincial Governments on technical matters arising out of the administration of this Act and to carry out the other functions assigned to it by this Act. The Drugs Technical Advisory Board.

(2) The Board shall consist of the following members, namely:— 40/49

- (i) the Director-General, ^{Health} ~~Indian Medical Service~~, *ex-officio*, who shall be Chairman;
- (ii) the Director of the Central Drugs Laboratory, *ex-officio*;
- (iii) the Director of the Central Research Institute, *ex-officio*;

¹ Subs. by the A. O. 1948 for "British India".

(Chapter II.—The Drugs Technical Advisory Board, the Central Drugs Laboratory and the Drugs Consultative Committee.)

- (iv) the Director of the Imperial Veterinary Research Institute, Muktesar, *ex-officio*;
- (v) the Chief Chemist, Central Revenues, *ex-officio*;
- (vi) two persons holding the appointment of Government Analyst under this Act, to be nominated by the Central Government;
- (vii) one pharmacologist and one pharmaceutical chemist to be elected by the Scientific Advisory Board of the Indian ~~Research Fund Association~~ ~~Council of Medical Research~~;
- (viii) three persons to be elected by the Medical Council of India, two of whom shall be from among teachers of medicine or therapeutics on the staff of a university or college in ~~India~~ ~~the Provinces~~ providing a course of study which qualifies

(ix) three persons to be elected by a pharmacy Council of India, two of whom shall be persons possessing qualifications for registration under the Pharmacy Act, 1948 and one shall be a teacher in pharmacy or pharmaceutical chemistry or pharmacology or pharmacognosy in an Indian University or a college affiliated thereto which grants a degree or diploma in pharmacy;

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~~1955~~ ~~branches in India of the British Medical Association.~~

Provided that the persons nominated under clause (vi) of sub-section (2) shall hold office for so long as they hold the appointment of Government Analyst under this Act.

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(5) The Board may constitute sub-committees and may appoint to such sub-committees for such periods, not exceeding three years, as it may decide, or temporarily for the consideration of particular matters, persons who are not members of the Board.

(6) The functions of the Board may be exercised notwithstanding any vacancy therein.

(7) The Central Government shall appoint a person to be Secretary of the Board and shall provide the Board with such clerical and other staff as the Central Government considers necessary.

¹ Subs. by the A. O. 1948 for "British India".

(Chapter II.—*The Drugs Technical Advisory Board, the Central Drugs Laboratory and the Drugs Consultative Committee.*)

6. (1) The Central Government shall, as soon as may be, establish a Central Drugs Laboratory under the control of a Director to be appointed by the Central Government, to carry out the functions entrusted to it by this Act or any rules made under this Chapter: The Central Drugs Laboratory.

Provided that, if the Central Government so prescribes, the functions of the Central Drugs Laboratory in respect of any drug or class of drugs shall be carried out at the Central Research Institute, Kasauli, or at any other prescribed Laboratory and the functions of the Director of the Central Drugs Laboratory in respect of such drug or class of drugs shall be exercised by the Director of that institute or of that other Laboratory, as the case may be.

(2) The Central Government may, after consultation with the Board, make rules prescribing—

- (a) the functions of the Central Drugs Laboratory;
- (b) the procedure for the grant of certificates of registration under this Act by the said Laboratory in respect of patent or proprietary medicines not having displayed on the label or container thereof the true formula or list of ingredients contained therein in a manner readily intelligible to members of the medical profession, the forms of such certificates and the fees payable therefor; 21/55
- (c) the procedure for preserving the secrecy of the formulae of patent or proprietary medicines when disclosed to the said Laboratory under this Act;
- (d) the procedure for the submission to the said Laboratory under Chapter IV of samples of drugs for analysis or test, the forms of the Laboratory's reports thereon and the fees payable in respect of such reports;
- (e) such other matters as may be necessary or expedient to enable the said Laboratory to carry out its functions;
- (f) the matters necessary to be prescribed for the purposes of the proviso to sub-section (1).

7. (1) The Central Government may constitute an advisory committee to be called "the Drugs Consultative Committee" to advise the Central Government, the Provincial Governments and the Drugs Technical Advisory Board on any matter tending to secure uniformity throughout the Provinces in the administration of this Act. The Drugs Consultative Committee.

(2) The Drugs Consultative Committee shall consist of two representatives of the Central Government to be nominated by that Government and one representative of each Provincial Government to be nominated by the Provincial Government concerned.

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¹ For the Drugs Rules, 1945, see Gazette of India, 1945, Pt. I, p. 1752.

(Chapter II.—The Drugs Technical Advisory Board, the Central Drugs Laboratory and the Drugs Consultative Committee. Chapter III.—Import of Drugs.)

(3) The Drugs Consultative Committee shall meet when required to do so by the Central Government and shall have power to regulate its own procedure.

CHAPTER III.

IMPORT OF DRUGS.

Standards
of quality.

8. (1) For the purposes of this Chapter the expression "standard quality" when applied to a drug means that the drug complies with the standard set out in the Schedule.

(2) The Central Government, after consultation with the Board and after giving by notification in the official Gazette not less than three months' notice of its intention so to do, may by a like notification add to or otherwise amend the Schedule for the purposes of this Chapter, and thereupon the Schedule shall be deemed to be amended accordingly.

Misbranded
drugs.

9. For the purposes of this Chapter a drug shall be deemed to be misbranded—

- (a) if it is an imitation of, or substitute for, or resembles in a manner likely to deceive, another drug, or bears upon it or upon its label or container the name of another drug, unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug; or
- (b) if it purports to be the product of a place or country of which it is not truly a product; or
- (c) if it is imported under a name which belongs to another drug; or
- (d) if it is so coloured, coated, powdered or polished that damage is concealed, or if it is made to appear of better or greater therapeutic value than it really is; or
- (e) if it is not labelled in the prescribed manner; or
- (f) if its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is false or misleading in any particular; or
- (g) if the label or container bears the name of an individual or company purporting to be the manufacturer or producer of the drug, which individual or company is fictitious or does not exist.

(Chapter III.—Import of Drugs.)

10. From such date as may be fixed by the Central Government by notification in the official Gazette in this behalf, no person shall import—

Prohibition
of import of
certain
drugs

- (a) any drug which is not of standard quality;
- (b) any misbranded drug;
- (c) any drug for the import of which a licence is prescribed, otherwise than under, and in accordance with, such

(d) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof the true formula or list of ingredients contained in it, in a manner readily intelligible to the members of the medical profession;

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- (e) any drug which by means of any statement design or device accompanying it or by any other means, purports or claims to cure or mitigate any such disease or ailment, or to have any such other effect, as may be prescribed;

- (f) any drug the import of which is prohibited by rule made under this Chapter:

Provided that nothing in this section shall apply to the import, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis or for personal use:

Provided further that the Central Government may, after consultation with the Board, by notification in the official Gazette, permit, subject to any conditions specified in the notification, the import of any drug or class of drugs not being of standard quality.

Explanation.—The formula or list of ingredients mentioned in clause (d) shall be deemed to be true and a sufficient compliance with that sub-clause if, without disclosing a full and detailed recipe of the ingredients, it indicates correctly all potent or poisonous substances contained therein together with an approximate statement of the composition of the medicine.

VIII of 1878. 11. (1) The law for the time being in force relating to sea customs and to goods, the import of which is prohibited by section 18 of the Sea Customs Act, 1878, shall, subject to the provisions of section 13 of this Act, apply in respect of drugs the import of which is prohibited under this Chapter, and officers of Customs and officers empowered

Application
of law re-
lating to sea
customs and
powers of
Customs
officers.

¹ 1st April, 1947 for clauses (a), (b), (c), (e) and (f) and 1st October 1 1948 for clause (d): see notification No. 18-12/46-D.I. dated 11th February, 1947, Gazette of India, 1947, Pt. I, p. 189 as amended by notification No. F.1.2/48-D.I. dated 30th March 1948, Gazette of India, 1948, Extraordinary, p. 435.

(2) Without prejudice to the provisions of sub-section (1), the Customs Collector or any officer of the Government authorised by the Central Govt. in this behalf, may detain any imported package which he suspects to contain any drug the import of which is prohibited under this Chapter and shall forthwith report such detention to the Drugs Controller, India, and, if necessary forward the package or ~~some~~ sample of any suspected drug found therein to the Central Laboratory.

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Power of
Central Government to
make rules.

12. (1) The Central Government may after consultation with the

Provided that consultation with the Board may be dispensed with if the Central Government is of opinion that circumstances have arisen which render it necessary to make rules without such consultation, but in such a case the Board shall be consulted within six months of the making of the rules and the Central Government shall take into consideration any suggestions which the Board may make in relation to the amendment of the said.

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(c) prescribe, in respect of biological and organometallic compounds, the units or methods of standardisation;

(d) specify the diseases or ailments which an imported drug may not purport or claim to ~~prevent~~ cure or mitigate and such and such other effects which such drug may not purport or claim to have;

(e) prescribe the conditions subject to which small quantities of drugs, the import of which is otherwise prohibited under this Chapter, may be imported for the purpose of examination, test or analysis or for personal use;

(f) prescribe the places at which drugs may be imported, and prohibit their import at any other place;

(g) require the date of manufacture and the date of expiry of potency to be clearly and truly stated on the label or container of any specified imported drug or class of such drug, and prohibit the import of the said drug or class of drug after the expiry of a specified period from the date of manufacture;

¹ For the Drugs Rules, 1945, see Gazette of India, 1945, Pt. I, p. 1752.

(Chapter III.—Import of Drugs.)

- (h) regulate the submission by importers, and the securing, of samples of drugs for examination, test or analysis by the Central Drugs Laboratory, and prescribe the fees, if any, payable for such examination, test or analysis;
- (i) prescribe the evidence to be supplied, whether by accompanying documents or otherwise, of the quality of drugs sought to be imported, the procedure of officers of Customs in dealing with such evidence, and the manner of storage at places of import of drugs detained pending admission;
- (j) provide for the exemption, conditionally or otherwise, from all or any of the provisions of this Chapter and the rules made thereunder of drugs imported for the purpose only of transport through, and export from; ¹[the Provinces];
- (k) prescribe the conditions to be observed in the packing in bottles, packages or other containers, of imported drugs;
- (l) regulate the mode of labelling drugs imported for sale in packages, and prescribe the matters which shall or shall not be included in such labels;
- (m) prescribe the maximum proportion of any poisonous substance which may be added to or contained in any imported drug, prohibit the import of any drug in which that proportion is exceeded, and specify substances which shall be deemed to be poisonous for the purposes of this Chapter and the rules made thereunder;
- (n) require that the accepted scientific name of any specified drug shall be displayed in the prescribed manner on the label or wrapper of any imported, patent or proprietary medicine containing such drug;
- (o) provide for the exemption, conditionally or otherwise, from all or any of the provisions of this Chapter or the rules made thereunder, of any specified drug or class of drugs.

13. (1) Whoever contravenes any of the provisions of this Chapter *Offences.* or of any rule made thereunder shall, in addition to any penalty to which he may be liable under the provision of section 11, be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

(2) Whoever, having been convicted under sub-section (1), is again convicted under that sub-section shall, in addition to any penalty as aforesaid, be punishable with imprisonment which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

¹ Subs. by the A. O. 1948 for "British India".

*(Chapter III.—Import of Drugs.)**Chapter IV.—Manufacture, Sale and Distribution of Drugs.)*

- Confiscation. 14. Where any offence punishable under section 13 has been committed, the consignment of the drug in respect of which the offence has been committed shall be liable to confiscation.
- Jurisdiction. 15. No Court inferior to that of a Presidency Magistrate or of a Magistrate of the first class shall try an offence punishable under section 13.

CHAPTER IV.

MANUFACTURE, SALE AND DISTRIBUTION OF DRUGS.

Standards of quality. 16. (1) For the purposes of this Chapter the expression "standard quality" when applied to a drug means that the drug complies with the standard set out in the Schedule.

(2) The ~~Provincial~~ ^{Central} Government, after consultation with the Board and after giving by notification in the official Gazette not less than three months' notice of its intention so to do, may by a like notification add to or otherwise amend the Schedule for the purposes of this Chapter, and thereupon the Schedule shall be deemed to be amended accordingly.

Misbranded drugs. 17. For the purposes of this Chapter a drug shall be deemed to be misbranded—

- (a) if it is an imitation of, or substitute for, or resembles in a manner likely to deceive, another drug, or bears upon it or upon its label or container the name of another drug, unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug; or
- (b) if it purports to be the product of a place or country of which it is not truly a product; or
- (c) if it is sold, or offered or exposed for sale, under a name which belongs to another drug; or
- (d) if it is so coloured, coated, powdered or polished that damage is concealed, or if it is made to appear of better or greater therapeutic value than it really is; or
- (e) if it is not labelled in the prescribed manner; or
- (f) if its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is false or misleading in any particular; or

(Chapter IV.—Manufacture, Sale and Distribution of Drugs.)

- (g) if the label or container bears the name of an individual or company purporting to be the manufacturer or producer of the drug which individual or company is fictitious or does not exist.

18. From such date as may be fixed by the ^{State} Provincial Government by notification in the official Gazette in this behalf, no person shall himself or by any other person on his behalf—

Prohibition of manufacture and sale of certain drugs.

- (a) manufacture for sale, or sell, or stock or exhibit for sale, or distribute—

(i) any drug which is not of standard quality;

(ii) any misbranded drug;

(iii) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label of container thereof the true formula or list of ingredients contained in it in a manner readily intelligible to the members of the medical profession;

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after being correctly informed of the formula of such medicine;

(iv) any drug which by means of any statement, design or device accompanying it or by any other means, purports or claims to ^{prevent} cure or mitigate any such disease or ailment, or to have any such other effect as may be prescribed;

(v) any drug, in contravention of any of the provisions of this Chapter or any rule made thereunder;

(b) sell, or stock, or exhibit for sale, or distribute any drug which has been imported or manufactured in contravention of any of the provisions of this Act or any rule made thereunder;

(c) manufacture for sale, or sell, or stock or exhibit for sale, or distribute any drug, except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter:

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis:

¹ 1st April 1947 for sub-clauses (i), (ii), (iv) and (v) of clause (a) and clauses (b) and (c); 1st October, 1948 for sub-clause (iii) of clause (a) of s. 18 in so far as it takes effect in Delhi, Ajmer-Merwara and Coorg, see notification No. 18-12/48-D-II, dated 11th February 1947, Gazette of India, 1947, Pt. I, p. 189 as amended by notification No. F. 1-2/48-D, II, dated 30th March 1948, Gazette of India, 1948, Extraordinary, p. 485.

(Chapter IV.—Manufacture, Sale and Distribution of Drugs.)

Provided further that the ^{Central}~~Provincial~~ Government may, after consultation with the Board, by notification in the official Gazette, permit, subject to any conditions specified in the notification, the manufacture for sale, sale or distribution of any drug or class of drugs not being of standard quality.

Explanation.—The formula or list of ingredients mentioned in sub-clause (iii) of clause (a) shall be deemed to be true and a sufficient compliance with that sub-clause if, without disclosing a full and detailed recipe of the ingredients, it indicates correctly all the potent or poisonous substances contained therein together with an approximate statement of the composition of the medicine.

Pleas.

19. (1) Save as hereinafter provided in this section, it shall be no defence in a prosecution under this Chapter to prove merely that the accused was ignorant of the nature, substance or quality of the drug in respect of which the offence has been committed or of the circumstances of its manufacture or import, or that a purchaser, having bought only for the purpose of test or analysis, has not been prejudiced by the sale.

(2) For the purposes of section 18 a drug shall not be deemed to be misbranded or to be below standard quality only by reason of the fact that—

(a) there has been added thereto some innocuous substance or ingredient because the same is required for the manufacture or preparation of the drug as an article of commerce in a state fit for carriage or consumption, and not to in-

(aa) in the process of manufacture or preparation any one or more of the prescribed colours have been used, although such use may not be provided for in any of the pharmacopoeias referred to in clause (d) of section 3; or

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(3) A person, not being the manufacturer of a drug or his agent for the distribution thereof, shall not be liable for a contravention of section 18 if he proves—

(a) that he did not know, and could not with reasonable diligence have ascertained, that the drug in any way contravened the provisions of that section, and that the drug while in his possession remained in the same state as when he acquired it; or

(b) that he acquired the drug from a person resident in ¹[the Provinces] under a written warranty in the prescribed form and signed by such person that the drug does not in

¹ Subs. by the A. O. 1948 for "British India".

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any way contravene the provisions of section 18, and that the drug while in his possession remained in the same state as when he acquired it:

It shall be a defence under clause (b) shall be open to a person

22.(1) Powers of Inspectors.— Subject to the provisions of section 23 and of any rules made by the Central Govt. in this behalf, an Inspector may, within the Local limits of the area for which he is appointed,

(a) inspect any premises wherein any drug is being manufactured and in the case of sera, vaccines and any other drug prescribed in this behalf the plant and process of manufacture and the means employed for standardising and testing the drug;

Government Analysts.

(b) take samples of any drug which is being manufactured, or being sold or is stocked or exhibited for sale, or is being distributed;

(c) enter and search at all reasonable times, with such assistants, if any, as he considers necessary, any place in which he has reason to believe that an offence under this Chapter has been or is being committed and order in writing the person in possession of any drug in respect of which the offence has been or is being committed, not to dispose of any stock of such drug for a specified period not exceeding twenty days, or, unless the alleged offence is such that the defect may be removed by the possessor of the drug, seize the stock of such drug;

Inspectors.

(d) exercise such other powers as may be necessary for carrying out the purposes of this Chapter or any rules made thereunder.

by Powers for Inspectors.

(2) The provisions of the Code of Criminal Procedure, 1898 shall, so far as may be, apply to any search or ~~seizure~~ seizure under this chapter as they apply to any search or seizure made under the authority of a warrant issued under section 98 of the said Code.

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(3) If any person wilfully obstructs an Inspector in the exercise of the powers conferred upon him by or under this Chapter, he shall be punishable with imprisonment which may extend to three years, or with fine, or with both.

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(Chapter IV.—Manufacture, Sale and Distribution of Drugs.)

hibited for sale, or is being distributed, contravenes any of the provisions of section 18, order in writing the person, in whose possession such drug may be, not to dispose of any stock of such drug for a specified period not exceeding ten days, or, unless the alleged contravention is such that the defect may be removed by the possessor of the drug, seize the stock of such drug.

Provided that the Inspector shall not take any action under this clause unless he has reported the facts to the District Magistrate or the Chief Presidency Magistrate and has been authorized by such Magistrate to take such action:

(d) for any of the aforesaid purposes enter at all reasonable times, with such assistants, if any, as he considers necessary, any premises wherein any drug is being manufactured, or being sold or is stocked or exhibited for sale, or is kept for distribution;

(e) exercise such other powers as may be necessary for carrying out the purposes of this Chapter or any rules made thereunder.

Procedure of
Inspectors

23. (1) Where an Inspector takes any sample of a drug under this Chapter, he shall tender the fair price thereof and may require a written acknowledgment therefor.

(2) Where the price tendered under sub-section (1) is refused, or where the Inspector seizes the stock of any drug under clause (c) of section 22, he shall tender a receipt therefor in the prescribed form.

(3) Where an Inspector takes a sample of a drug for the purpose of test or analysis, he shall intimate such purpose in writing in the prescribed form to the person from whom he takes it and, in the presence of such person unless he wilfully absents himself, shall divide the sample into four portions and effectively seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked:

Provided that where the sample is taken from premises whereon the drug is being manufactured, it shall be necessary to divide the sample into three portions only:

Provided further that where the drug is made up in containers of small volume, instead of dividing a sample as aforesaid, the Inspector may, and if the drug be such that it is likely to deteriorate or be otherwise damaged by exposure shall, take three or four, as the case may be, of the said containers after suitably marking the same and, where necessary, sealing them.

(4) The Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it, and shall retain the remainder and dispose of the same as follows:—

(Chapter IV.—Manufacture, Sale and Distribution of Drugs.)

- (i) one portion or container he shall forthwith send to the Government Analyst for test or analysis;
 - (ii) the second he shall produce to the Court before which proceedings, if any, are instituted in respect of the drug; and
 - (iii) the third, where taken, he shall send to the warrantor, if any, named under the proviso to sub-section (3) of section 19.
- (5) Where an Inspector takes any action under clause (c) of section 22.—

- (a) he shall use all despatch in ascertaining whether or not the drug contravenes any of the provisions of section 18 and, if it is ascertained that the drug does not so contravene, forthwith revoke the order passed under the said clause or, as the case may be, take such action as may be necessary for the return of the stock seized;
- (b) if he seizes the stock of the drug, he shall as soon as may be inform a Magistrate and take his orders as to the custody thereof;
- (c) without prejudice to the institution of any prosecution, if the alleged contravention be such that the defect may be remedied by the possessor of the drug, he shall, on being satisfied that the defect has been so remedied, forthwith revoke his order under the said clause.

24. Every person for the time being in charge of any premises whereon any drug is being manufactured or is kept for sale or distribution shall, on being required by an Inspector so to do, be legally bound to disclose to the Inspector the place where the drug is being manufactured or is kept, as the case may be.

Persons bound to disclose place where drugs are manufactured or kept.

25. (1) The Government Analyst to whom a sample of any drug has been submitted for test or analysis under sub-section (4) of section 23, shall deliver to the Inspector submitting it a signed report in triplicate in the prescribed form.

Reports of Government Analysts.

(2) The Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and another copy to the warrantor, if any, named under the proviso to sub-section (3) of section 19, and shall retain the third copy for use in any prosecution in respect of the sample.

(3) Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken or the said warrantor has, within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversy of the report.

(Chapter IV.—Manufacture, Sale and Distribution of Drugs.)

(4) Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused, cause the sample of the drug produced before the Magistrate under sub-section (4) of section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Central Drugs Laboratory under sub-section (4) shall be paid by the complainant or accused as the Court shall direct.

Purchaser of
drug enabled
to obtain test
or analysis.

26. Any person shall, on application in the prescribed manner and on payment of the prescribed fee, be entitled to submit for test or analysis to a Government Analyst any drug purchased by him and to receive a report of such test or analysis signed by the Government Analyst.

Penalty for
manufacture,
sale, etc.,
of drugs in
contraven-
tion of this
Chapter.

27. Whoever himself or by any other person on his behalf manufactures for sale, sells, stocks or exhibits for sale, or distributes any drug in contravention of any of the provisions of this Chapter or any rule made thereunder shall be punishable with imprisonment which may extend to ~~one~~^{five} year, or with fine ~~which may extend to five hundred rupees, or with both.~~

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Penalties for
giving false
warranty or
misuse of
warranty.

28. (1) Whoever in respect of any drug sold by him ~~whether as principal or agent,~~ gives to the purchaser a false warranty that the drug does not in any way contravene the provisions of section 18 shall, unless he proves that when he gave the warranty he had good reason to believe the same to be true, be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

(2) Whoever applies or permits to be applied to any drug sold, or stocked or exhibited for sale, by him, whether on the container or label or in any other manner, a warranty given in respect of any other drug, shall be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

Penalty for
use of Govern-
ment Analyst's
report for advertis-
ing.

29. Whoever uses any report of a test or analysis made by the Central Drugs Laboratory or by a Government Analyst, or any extract from such report for the purpose of advertising any drug, shall be punishable with fine which may extend to five hundred rupees.

30.(1) Penalty for subsequent offences.-
Whoever, having been convicted of an offence under section 27 is again convicted of an offence under that section, shall be punishable with imprisonment which may extend to five years, or with fine, or with both. Penalty to subsequent offences.

(2) Whoever, having been convicted of an offence under section 28 or section 29 is again convicted of an offence under the same section shall be punishable with imprisonment which may extend to two years, or with both. Confiscation

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~~32. (1) No prosecution under this Chapter shall be instituted except by an Inspector.~~ Cognisance of offences.

(2) No Court inferior to that of a Presidency Magistrate or of a Magistrate of the first class shall try an offence punishable under this Chapter.

(3) Nothing contained in this Chapter shall be deemed to prevent

(1) Power of Central Government to make rules:
The Central Government may after consultation with the Board and after previous publication by notification in the Official Gazette, make rules for the purpose of giving effect to the provisions of this Chapter; Power of Provincial Government to make rules.

Provided that consultation with the Board may be dispensed with if the Central Government is of opinion that circumstances have arisen which render it necessary to make rules without such consultation, but in such a case the Board shall be consulted within six months of the making of the rules of the Central Government shall take into consideration any suggestions which the Board may make in relation to the amendment of the said rules.

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pounds, the units or methods of standardisation;

(e) prescribe the forms of licences for the manufacture for sale, for the sale and for the distribution of drugs or any specified drug or class of drugs, the form of application for such licences, the conditions subject to which such licences may be issued, the authority empowered to issue the same and the fees payable therefor;

(f) specify the diseases or ailments which a drug may not purport or claim to cure or mitigate and such other effects which a drug may not purport or claim to have;

(Chapter IV.—Manufacture, Sale and Distribution of Drugs.)

- (g) prescribe the conditions subject to which small quantities of drugs may be manufactured for the purpose of exami-

CHAPTER V.
MISCELLANEOUS.

34(1). Offences by companies.— Where an offence under this Act has been committed by a

35.(1) Publication of sentences passed under this Act.— If any person is convicted of an offence under this Act, it shall be lawful for the Court before which the conviction takes place to cause the offender's name, place of residence, the offence of which he has been convicted and the penalty which has been inflicted upon him, to be published at the expense of such person in such newspapers or in such other manner as the Court may direct.

(2) The expenses of such publication shall be deemed to form part of the costs relating to the conviction and shall be recoverable in the same manner as those costs are recoverable.

36. Magistrate's power to impose enhanced penalties.— Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any presidency Magistrate or any Magistrate of the first class to pass any sentence authorised by this Act in excess of his powers under section 32 of the said Code.

37. Protection of action taken in good faith.— No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

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(b) 'director' in relation to a firm means a partner in the firm.

34. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Chapter.

(The Schedule.)

THE SCHEDULE.

(See sections 8 and 16.)

Standards to be complied with by imported drugs and by drugs manufactured for sale, sold, stocked or exhibited for sale, or distributed.

Class of drug.	Standard to be complied with.
1. Patent or proprietary medicines.	The formula or list of ingredients displayed in the prescribed manner on the label or container, or the formula disclosed to the Central Drugs Laboratory, as the case may be.
2. Substances commonly known as vaccines, sera, toxins, toxoids, antitoxins, and antigens and biological products of such nature.	The standards maintained at the National Institute for Medical Research, London, and such further standards of strength, quality and purity as may be prescribed.
3. Vitamins, hormones and analogous products.	Such standards as may be prescribed.
3A. Substances (other than food) intended to affect the structure or any function of the human body or intended to be used for the destruction of vermins or insects which cause disease in human beings or animals.	

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Commission on Biological
Standardisation of the League
of Nations.

THE AGRICULTURAL PRODUCE CESS
ACT, 1940.

ACT NO. XXVII OF 1940.¹

[15th April, 1940.]

An Act to make better financial provision for the
Imperial Council of Agricultural Research.

WHEREAS it is expedient to make better financial provision for the carrying out by the Imperial Council of Agriculture Research of the objects for which it is established as set forth in the Memorandum of Association of that body, and for this purpose to impose on certain articles a cess by way of customs duty on export, the proceeds of which shall be paid to the said Council;

It is hereby enacted as follows:—

Short title
and extent,

1. (1) This Act may be called the Agricultural Produce Cess Act, 1940.

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(2) It extends to ^{the whole of} ~~all the Provinces~~ of India.

Definitions,

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "Collector" means a Customs-collector as defined in clause (c) of section 3 of the Sea Customs Act, 1878, or a Collector of Land Customs as defined in clause (c) of section 2 of the Land Customs Act, 1924, as the case may be, and ^{VIII of 1878,} ^{XIX of 1924,}

(b) "Council" means the ^{India} ~~Imperial~~ Council of Agricultural Research.

Imposition
of cess.

3. (1) A customs duty at the rate of one-half of one per cent. *ad valorem* shall be levied on all articles included in the Schedule which are exported from ^{India} ~~the Provinces~~: ^{22/36}

11/58

Provided that the said duty shall not be levied on articles proved to the satisfaction of the Collector not to have been produced in India.

(2) The Central Government may, by notification in the official Gazette, fix for the purposes of levying the said duty tariff values of any articles included in the Schedule, and may alter any tariff values for the time being in force.

Power to
exclude
articles from
Schedule.

4. The Central Government may after previous consultation with the Council, by notification in the official Gazette, direct that any

¹ For the Statement of Objects and Reasons, see Gazette of India, 1940, Pt. V, p. 114.

² Subs. by the A.O. 1948 for "the whole of British India".

³ Subs. by the A.O. 1948 for "British India".

⁴ For such notification see Gazette of India, 1947, Extraordinary, p. 611.

⁵ For such notification, see Gazette of India, 1940, Pt. I, p. 1323.

article specified in the Schedule shall cease to be subject to the duty imposed by section 3, and thereupon, so long as the notification remains in force, that article shall be deemed not to be included in the Schedule.

5. The Central Board of Revenue may make rules providing, on such conditions as may be specified in the rules, for—

Refund of,
and exemp-
tion from,
cess.

(a) the refund of duty levied where articles are exported by land and subsequently imported into India, and

(b) the export by land, without payment of the duty of articles, which are subsequently to be imported into India.

6. (1) The proceeds of the duty levied under this Act reduced by the cost of collection as determined by the Central Government shall be paid to the Council.

Payment of
cess to
Council and
expenditure
of cess by
Council.

(2) The amount so due shall be paid by the Central Government to the Council at intervals of not more than six months.

(3) The expenditure of the money so paid to the Council shall be subject to such limitation as may be imposed by rules made in this behalf by the Central Government.

7. (1) ^{Balance.} The Council shall constitute a Standing Finance Committee, of which one member shall be chosen from among the representatives of the ~~Central Legislature~~ on the governing body of the Council, and one member shall be an officer appointed by the Central Government.

Standing
Finance
Committee.

(2) Subject to the provisions of sub-section (1) the constitution, functions and procedure of the Standing Finance Committee shall be regulated in such manner as the Council may with the previous approval of the Central Government determine.

8. The Council shall in accordance with the rules made in this behalf by the Central Government create and maintain a reserve fund.

Reserve
fund.

9. (1) The Central Government may, after consultation with the Council, by notification in the official Gazette, make rules to carry out the purposes of this Act.

Power of
Central Go-
vernment to
make rules.

(2) In particular and without prejudice to the generality of the foregoing power, the Central Government may make rules regulating the expenditure of the money paid to the Council under section 6 and providing for the creation, maintenance and management of the reserve fund referred to in section 8.

(3) All rules made under this Act shall be laid before the ~~Central Legislature~~ as soon as may be after they are made.

^{Parliament}

¹ For such rules, see Gazette of India, 1940, Pt. I, p. 565.

² For such rules, see Gazette of India, 1940, Pt. I, p. 1353.

³ The words "both Chambers of" were rep. by the A.O. 1948.

(The Schedule.)

THE SCHEDULE.

(See section 3.)

1. BONES.
 2. BRISTLES.
 3. BUTTER.
 4. CEREALS, other than Rice and Wheat.
 5. DRUGS.
 6. FIBRE for brushes.
 7. FISH.
 8. FRUITS.
 9. GHEE.
 10. HIDES, raw.
 11. MANURES.
 12. OILCAKES.
 13. PULSES.
 14. SEEDS.
 15. SKINS raw.
 16. SPICES.
 17. TOBACCO, unmanufactured.
 18. VEGETABLES.
 19. WHEAT.
 20. WHEAT FLOUR.
 21. WOOL, raw.
-

THE INDIAN FINANCE (NO. 2) ACT, 1940¹.

[29th November, 1940.]

An act² * * * to increase the rates of the taxes on income imposed by the Indian Finance Act, 1940, by a surcharge for the purposes of the Central Government and to increase the rate of super-tax payable by companies.

XVI of 1940.

WHEREAS it is expedient² * * * to increase the rates of the taxes on income imposed by the Indian Finance Act, 1940, by a surcharge for the purposes of the Central Government, and to increase the rate of super-tax payable by companies;

It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Finance (No. 2) Act, 1940. Short title
and extent.

(2) It extends to the whole of India except the territories which immediately before the 1st November 1956, were comprised in Part B States.

XVI of 1940.

3. (1) Subject to the provisions of this section, the rates of income-tax and the rates of super-tax other than super-tax payable by a company, imposed by sub-section (1) of section 7 of the Indian Finance Act, 1940, shall in respect of the year beginning on the 1st day of April, 1940, be increased by a surcharge for the purposes of the Central Government amounting to one-twelfth of each such rate, and the rate of super-tax payable by a company imposed by the said sub-section shall in respect of the same year be increased by one-twelfth. Income-tax
and super-
tax.

¹ This Act was made by the Governor General under s. 67B of the Government of India Act as set out in the Ninth Schedule to the Government of India Act, 1935. No number was given to this Act.

For the Statement of Objects and Reasons, see [Gazette of India, 1940, Pt. V, p. 232. This Act has been applied to:—

all partially excluded areas of the province of Orissa, by Orissa Government Notification No. 341-F., dated 28th January, 1941;

partially excluded areas of the province of Madras by Madras Government Notification No. 16, dated 24th January, 1941;

the partially excluded areas of the Darjeeling district with effect from the 29th November, 1940, by the late Bengal Government [Notification No. 950-F. B., dated the 10th February, 1941.

² The words "to alter the maximum rates of postage under the Indian Post Office Act, 1898" were rep. by the Repealing and Amending Act, 1945 (6 of 1945), s. 2 and Sch. I.

³ Subs. by the A.O. 1948 for "the whole of British India",

(2) In making any assessment for the year ending on the 31st day of March, 1941,—

(a) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" or under the head "Interest on Securities", or any income from dividends in respect of which he is deemed under section 49B of the Indian Income-tax Act, 1922, ^{XI of 1922} to have paid income-tax imposed in ~~the Provinces~~, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates in force before the commencement of this Act on his total income the same proportion as the amount of such inclusions bears to his total income:

(b) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" on which super-tax has been or might have been deducted under the provisions of sub-section (2) of section 18 of the Indian Income-tax Act, 1922, the super-tax payable ^{XI of 1922} by the assessee on that portion of his total income which consists of such inclusions shall be an amount bearing to the total amount of super-tax payable according to the rates in force before the commencement of this Act on his total income the same proportion as the amount of such inclusion bears to his total income.

(3) For the purposes of the proviso to sub-section (2) of section 18 of the Indian Income-tax Act, 1922, the amount by which any deduction made under that sub-section by a person responsible for paying any income chargeable under the head "Salaries" falls short of the deduction which could have been made had the rates imposed by this Act then been in force shall be deemed to be a deficiency arising out of a previous deduction or failure to deduct. ^{XI of 1922}

(4) Notwithstanding that the Income-tax Officer has assessed the total income of an assessee and has determined the sum payable thereon under section 23 of the Indian Income-tax Act, 1922, he may proceed ^{XI of 1922} to determine the further sum payable by such assessee by virtue of sub-section (1) of this section and such further sum shall for the purposes of the Indian Income-tax Act, 1922, be deemed to be a sum de- ^{XI of 1922} termined under section 23 of that Act.

¹ Subs. by the A.O. 1948 for "British India".

THE INSURANCE DEPOSITS (TEMPORARY REDUCTION) ACT, 1941.

Act No. I of 1941¹.

[3rd March, 1941.]

IV of 1938. An Act to provide for the reduction temporarily of the amounts payable as instalments of the sum to be deposited by an insurer under section 7 of the Insurance Act, 1938.

IV of 1938. **W**HEREAS, in consequence of conditions arising out of the present war, it is expedient to provide for the reduction temporarily of the amounts payable as instalments of the sum to be deposited by an insurer under section 7 of the Insurance Act, 1938;

It is hereby enacted as follows:—

1. (1) This Act may be called the Insurance Deposits (Temporary Reduction) Act, 1941. Short title and extent.

(2) It extends to ~~all the~~ ^{whole} ~~Provinces of India.] except Part B states~~

IV of 1938. 2. In this Act "insurer" means an insurer as defined in clause (9) of section 2 of the Insurance Act, 1938, except that it does not include a Mutual Insurance Company, or a Co-operative Life Insurance Society to which Part IV of that Act applies. Definition.

IV of 1938. 3. (1) An insurer entitled to the benefits of this Act shall, subject to the provisions of section 5, be deemed in respect of any instalment of the deposit to be made by him under section 7 of the Insurance Act, 1938 which he was required to pay during the year commencing on the 1st day of January, 1940, or which he may be required to pay at any time after the end of that year and so long as this section continues to have effect, to have complied with the provisions of the said section 7 as to payment of instalments of deposits, if he has paid or pays in accordance with the provisions of that section not less than one half Reduction of instalments of deposits.

¹ For Statement of Objects and Reasons, see Gazette of India, Extraordinary, dated the 21st January, 1941.

This Act has been applied to the Darjeeling District with effect from the 17th April, 1941, see the late Bengal Govt. notification No. 1140-Com., dated the 7th April, 1941, and to all partially excluded areas in the Province of Orissa by Orissa Govt. notification No. 957-1110-2/44-Com., dated the 3rd March, 1944.

² Subs. by the A.O. 1948 for "the whole of British India".

³ This section has ceased to have effect from 1st August, 1947 by virtue of sub-section (3) of this section.

the total amount which would have been required by that section as the instalment, had the insurer not availed himself of the provisions of this Act.

(2) If an insurer entitled to the benefits of this Act, when paying an instalment of deposit, has, in respect of any instalment due during the year commencing on the 1st day of January, 1940, paid more than one half the total amount required by the said section 7 as the instalment, he may at his option have the amount of any such surplus payment appropriated to the payment of the next or any subsequent instalment of deposit required from him under the said section 7 read with sub-section (1) of this section. ...

(3) This section shall cease to have effect on the expiration of one year from such date as may be fixed, for the purposes of this Act, by the Central Government by notification in the official Gazette as the date of termination of the present hostilities.

Insurers entitled to the benefits of this Act.

4. An insurer shall be entitled to the benefits of this Act only if—

(a) he carries on life insurance business only; and

(b) the date on which he first assumed risk on any policy issued by him was earlier than the 3rd day of September, 1939, but not earlier than the 3rd day of September, 1929.

Ceaser of title to the benefits of this Act.

5. (1) An insurer otherwise entitled to the benefits of this Act shall cease to be so entitled in any year if, in the preceding year his total premium income, including annuity considerations, as shown in the revenue-account prepared under the Insurance Act, 1938, exceeded IV of 1938. rupees thirty thousand.

(2) An insurer otherwise entitled to the benefits of this Act shall cease to be so entitled in respect of any future instalment—

(a) if after the 1st day of January, 1941, he declares any bonus or dividend at a rate higher than the rate at which such bonuses or dividends were last declared by him before the 3rd day of September, 1939, or

(b) if the proportion of his renewal premium income spent by him in payment of commission and other expenses including capital expenditure, determined in accordance with Rule 25 of the Insurance Rules, 1939, exceeds in any year

¹ 1st August, 1946 : see Gazette of India, 1946, Pt. I, p. 1099.

the proportion as so determined for the accounting period ending on the 31st day of December, 1939.

IV of 1938. 6. (1) When section 3 ceases to have effect, or if before that date an insurer ceases under clause (a) or clause (b) of sub-section (2) of section 5 to be entitled to the benefits of this Act, instalments of deposits shall be paid in accordance with the provisions of section 7 of the Insurance Act, 1938 (except that no insurer shall be required to pay as an instalment an amount exceeding the amount which would have been payable by him had he not availed himself of the provisions of this Act), until the last instalment required to be paid under the said section 7 has been paid, and the balance of the deposit then remaining unpaid in consequence of the reduced instalments authorised under this Act shall be paid by the insurer in such further instalments, of such amount and at such times, as the Central Government may direct.

Resumption of payment of instalments in accordance with Act IV of 1938.

IV of 1938. (2) If while section 3 continues to have effect an insurer ceases in any year under sub-section (1) of section 5 to be entitled to the benefits of this Act, instalments of deposit in that year shall be paid by him in accordance with the provisions of section 7 of the Insurance Act, 1938, except that he shall not be required to pay as an instalment an amount exceeding the amount which would have been payable by him had he not availed himself of the provisions of this Act, and the provisions of sub-section (1) of this section shall apply to the payment by such insurer of any balance of the deposit due from him which remains unpaid after the last instalment required to be paid under the said section 7 has been paid.

V of 1938. 7. For the purposes of the Insurance Act, 1938, an insurer entitled to the benefits of this Act who has failed to pay before the 1st day of January, 1941, an instalment of deposit due in the year 1940 shall not be liable to any consequences on that account in respect of a failure to comply with the provisions of section 7 of the said Act as to deposits if before the 15th day of February, 1941, he has paid as such instalment not less than one half the total amount required by the said section 7.

Saving in respect of delayed payments of instalments of deposits.

8. If any difficulty arises in determining the amount payable as an instalment of deposit by an insurer under this Act, the matter shall be decided by the Central Government whose decision shall be final.

Removal of difficulties.

THE BERAR LAWS ACT, 1941.

Act No. IV of 1941¹.

[17th March, 1941.]

An Act to extend certain Acts to Berar.

WHEREAS by orders made under the Indian (Foreign Jurisdiction) Order in Council, 1902, the provisions of certain Acts ~~in force in [the Provinces]~~ have from time to time been applied to, and are now, by virtue of such application, in force in, Berar;

AND WHEREAS it is expedient that those and certain other Acts should be extended to, and be, by virtue of such extension, in force in, Berar;

It is hereby enacted as follows:—

Short title
and commence-
ment.

1. (1) This Act may be called the Berar Laws Act, 1941.

(2) It shall come into force on such date as the Central Government may by notification in the official Gazette, appoint.

Extension of
certain Acts
to Berar.

2. (1) The Acts specified in the First Schedule and so much of any Act specified in the Second Schedule as relates to matters with respect to which the Central Legislature has power to make laws are hereby extended to, and shall be in force in, Berar; and in any enactment so extended ~~any reference by whatever form of words to subjects of His Majesty shall be deemed to include a reference to Berar subjects of His Exalted Highness the Nizam of Hyderabad, and notwithstanding anything contained in clause (i) of section 3 of the General Clauses Act, 1897, any reference to [the Provinces] shall be construed as a reference to [the Provinces] and Berar.~~

(2) The Acts specified in the Third Schedule shall be amended in the manner set forth in the second column of that Schedule.

Extension of
application
of certain
Acts to
Berar.

3. The application, if any, to Berar, made by order under the Indian (Foreign Jurisdiction) Order in Council, 1902, of the Acts specified in the First Schedule, of so much of any Act specified in the Second Schedule as relates to matters with respect to which the Central Legislature has power to make laws, and of the Indian Cotton Cess Act, 1923, shall cease to have effect:

XIV² of
1923.

Provided that all appointments, delegations, notifications, orders, bye-laws, rules and regulations, which have been made or issued under, or in pursuance of, any provision of any of the said Acts as applied to Berar by order under the said Order in Council, and which are in force at the commencement of this Act, shall be deemed to have been made or issued under or in pursuance of the corresponding provision of that Act as now extended to, and in force in, Berar.

Removal of
doubt.

4. For the removal of doubt it is hereby declared that the Acts specified in the Fourth Schedule have ceased to have effect and are repealed in Berar.

¹ For Statement of Objects and Reasons, see Gazette of India, 1940, Pt. V, p. 247; and for Report of Select Committee, see *ibid.*, 1941, Pt. V, p. 50.

² Subs. by the A.O. 1948 for "British India".

³ The 1st August, 1941, see Gazette of India, 1941, Pt. I, p. 960.

Berar Laws.
(*The First Schedule.*),
THE FIRST SCHEDULE.
[See sections 2 (I) and 3.]
Acts Extended to Berar

Year.	Number.	Short Title
1850	XIX	The Apprentices Act, 1850.
1850	XXI	The Caste Disabilities Removal Act, 1850.
1855	XIII	The Indian Fatal Accidents Act, 1855.
1856	XI	The European Deserters Act, 1856.
1856	XV	The Hindu Widows' Re-marriage Act, 1856.
1860	XLV	The Indian Penal Code.
1864	III	The Foreigners Act, 1864.
1865	III	The Carriers Act, 1865.
1866	XXI	The Native Converts' Marriage Dissolution Act, 1866.
1867	XXV	The Press and Registration of Books Act, 1867.
1869	IV	The Indian Divorce Act.
1872	I	The Indian Evidence Act, 1872.
1872	III	The Special Marriage Act, 1872.
1872	IX	The Indian Contract Act, 1872.
1872	XV	The Indian Christian Marriage Act, 1872.
1873	V	The Government Savings Banks Act, 1873.
1873	X	The Indian Oaths Act, 1873.
1874	IX	The European Vagrancy Act, 1874.
1875	IX	The Indian Majority Act, 1875.
1875	XVIII	The Indian Law Reports Act, 1875.
1876	IX	The Native Coinage Act, 1876.
1877	I	The Specific Relief Act, 1877.
1878	VIII	The Sea Customs Act, 1878.
1878	XI	The Indian Arms Act, 1878.
1879	XVIII	The Legal Practitioners Act, 1879.
1881	XXVI	The Negotiable Instruments Act, 1881.

Berar Laws.
(*The First Schedule.*)
THE FIRST SCHEDULE—*contd.*

[1941: Act IV.]

Year.	Number.	Short Title.
1882	II	The Indian Trusts Act, 1882.
1882	XII	The Indian Salt Act, 1882.
1884	IV	The Indian Explosives Act, 1884.
1888	III	The Police Act, 1888.
1889	IV	The Indian Merchandise Marks Act, 1889.
1890	VIII	The Guardians and Wards Act, 1890.
1890	XI	The Prevention of Cruelty to Animals Act, 1890.
1891	XVIII	The Bankers' Books Evidence Act, 1891.
1898	V	The Code of Criminal Procedure, 1898.
1901	II	The Indian Tolls (Army) Act, 1901.
1903	VII	The Indian Works of Defence Act, 1903.
1903	XV	The Indian Extradition Act, 1903.
1904	VII	The Ancient Monuments Preservation Act, 1904.
1905	IV	The Indian Railway Board Act, 1905.
1906	III	The Indian Coinage Act, 1906.
1908	V	The Code of Civil Procedure, 1908.
1908	VI	The Explosive Substances Act, 1908.
1908	IX	The Indian Limitation Act, 1908.
1908	XIV	The Indian Criminal Law Amendment Act, 1908.
1908	XVI	The Indian Registration Act, 1908.
1909	IV	The Whipping Act, 1909.
1910	IX	The Indian Electricity Act, 1910.
1911	II	The Indian Patents and Designs Act, 1911.
1911	VIII	The Indian Army Act, 1911.
1912	IV	The Indian Lunacy Act, 1912.
1913	II	The Official Trustees Act, 1913.
1913	III	The Administrator General's Act, 1913.

Year.	Number.	Short Title.
1914	III	The Indian Copyright Act, 1914.
1916	VII	The Indian Medical Degrees Act, 1916.
1917	II	The Motor Spirit (Duties) Act, 1917.
1917	XVIII	The Post Office Cash Certificates Act, 1917.
1918	XXII	The Bronze Coin (Legal Tender) Act, 1918.
1919	XII	The Poisons Act, 1919.
1920	V	The Provincial Insolvency Act, 1920.
1920	XIV	The Charitable and Religious Trusts Act, 1920.
1920	XV	The Indian Red Cross Society Act, 1920.
1920	XLVII	The Imperial Bank of India Act, 1920.
1920	XLVIII	The Indian Territorial Force Act, 1920.
1920	XLIX	The Auxiliary Force Act, 1920.
1921	XVIII	The Maintenance Orders Enforcement Act, 1921.
1922	XI	The Indian Income-tax Act, 1922.
1922	XII	The Indian Finance Act, 1922.
1922		The Indian States (Protection against Disaffection) Act, 1922.
1923	IV	The Indian Mines Act, 1923.
1923	V	The Indian Boilers Act, 1923.
1923	VIII	The Workmen's Compensation Act, 1923.
1923	XXIII	The Legal Practitioners (Women) Act, 1923.
1924	VI	The Criminal Tribes Act, 1924.
1925	XXXIX	The Indian Succession Act, 1925.
1926	XI	The Promissory Notes (Stamp) Act, 1926.
1926	XVI	The Indian Trade Unions Act, 1926.
1926	XXI	The Legal Practitioners (Fees) Act, 1926.
1926	XXXVIII	The Indian Bar Councils Act, 1926.
1929	VII	The Trade Disputes Act, 1929.

Year.	Number.	Short Title.
1929	XIX .	The Child Marriage Restraint Act, 1929.
1930	II .	The Dangerous Drugs Act, 1930.
1930	III .	The Indian Sale of Goods Act, 1930.
1930	XVIII .	The Silver (Excise Duty) Act, 1930.
1930	XIX .	The Indian Companies (Amendment) Act, 1930.
1930	XXIV .	The Indian Lac Cess Act, 1930.
1931	.	The Indian Finance Act, 1931.
1931	.	The Indian Finance (Supplementary and Extending) Act, 1931.
1931	XVI .	The Provisional Collection of Taxes Act, 1931.
1931	XXIII .	The Indian Press (Emergency Powers) Act, 1931.
1932	IX .	The Indian Partnership Act, 1932.
1932	XI .	The Public Suits Validation Act, 1932.
1932	XII .	The Foreign Relations Act, 1932.
1932	XIII .	The Sugar Industry (Protection) Act, 1932.
1932	XXIII .	The Criminal Law Amendment Act, 1932.
1933	II .	The Children (Pledging of Labour) Act, 1933.
1933	VII .	The Indian Finance Act, 1933.
1933	XVII .	The Indian Wireless Telegraphy Act, 1933.
1933	XXVII .	The Indian Medical Council Act, 1933.
1934	II .	The Reserve Bank of India Act, 1934.
1934	VIII .	The Khaddar (Name Protection) Act, 1934.
1934	IX .	The Indian Finance Act, 1934.
1934	XI .	The Indian States (Protection) Act, 1934.
1934	XIV .	The Sugar (Excise Duty) Act, 1934.
1934	XVI .	The Matches (Excise Duty) Act, 1934.
1934	XX .	The Indian Carriage by Air Act, 1934.
1934	XXII .	The Indian Aircraft Act, 1934.

(The First Schedule. The Second Schedule.)

THE FIRST SCHEDULE—*contd.*

Year.	Number.	Short Title.
1934	XXIII.	The Mechanical Lighters (Excise Duty) Act, 1934.
1934	XXV .	The Factories Act, 1934.
1934	XXXI.	The Iron and Steel Duties Act, 1934.
1934	XXXII.	The Indian Tariff Act, 1934.
1935	..	The Indian Finance Act, 1935.
1936	..	The Indian Finance Act, 1936.
1936	III .	The Parsi Marriage and Divorce Act, 1936.
1936	IV ..	The Payment of Wages Act, 1936.
1936	XIV .	The Geneva Convention Implementing Act, 1936.
1937	I . .	The Agricultural Produce (Grading and Marking) Act, 1937.
1937	VI .	The Arbitration (Protocol and Convention) Act, 1937.
1937	..	The Indian Finance Act, 1937.

THE SECOND SCHEDULE.

[See sections 2 (1) and 3.]

Acts partially extended to Berar.

Year.	Number.	Short Title.
1843	V .	The Indian Slavery Act, 1843.
1850	XII .	The Public Accountants' Default Act, 1850.
1850	XXXVII	The Public Servants (Inquiries) Act, 1850.
1855	XXIV .	The Penal Servitude Act, 1855.
1870	VII .	The Court-fees Act, 1870.
1871	XXIII	The Pensions Act, 1871.
1881	XI .	The Municipal Taxation Act, 1881.

Berar Laws.
(*The Second Schedule.*)
THE SECOND SCHEDULE—*contd.*

[1941: Act IV.]

Year.	Number.	Short Title.
1882	IV	The Transfer of Property Act, 1882.
1885	XIII	The Indian Telegraph Act, 1885.
1886	VI	The Births, Deaths and Marriages Registration Act, 1886.
1886	XI	The Indian Tramways Act, 1886.
1890	I	The Revenue Recovery Act, 1890.
1890	VI	The Charitable Endowments Act, 1890.
1890	IX	The Indian Railways Act, 1890.
1895	XV	The Crown Grants Act, 1895.
1897	III	The Epidemic Diseases Act, 1897.
1897	X	The General Clauses Act, 1897.
1897	XIV	The Indian Short Titles Act, 1897.
1898	VI	The Indian Post Office Act, 1898.
1899	II	The Indian Stamp Act, 1899.
1899	IV	The Government Buildings Act, 1899.
1913	VII	The Indian Companies Act, 1913.
1914	IX	The Local Authorities Loans Act, 1914.
1916	XV	The Hindu Disposition of Property Act, 1916.
1917	V	The Destruction of Records Act, 1917.
1918	II	The Cinematograph Act, 1918.
1920	X	The Indian Securities Act, 1920.
1920	XXXIX	The Indian Elections Offences and Inquiries Act, 1920.
1923	III	The Cotton Transport Act, 1923.
1923	XIX	The Indian Official Secrets Act, 1923.
1924	XIII	The Indian (Specified Instruments) Stamp Act, 1924.
1925	IV	The Indian Soldiers (Litigation) Act, 1925.
1925	XII	The Cotton Ginning and Pressing Factories Act, 1925.
1925	XIX	The Provident Funds Act, 1925.

(The Second Schedule—The Third Schedule.)

THE SECOND SCHEDULE—contd.

Year.	Number.	Short Title.
1927	XVI .	The Indian Forest Act, 1927.
1928	XII .	The Hindu Inheritance (Removal of Disabilities) Act, 1928.
1929	II .	The Hindu Law of Inheritance (Amendment) Act, 1929.
1930	XXX .	The Hindu Gains of Learning Act, 1930.
1936	V .	The Decrees and Orders Validating Act, 1936.

THE THIRD SCHEDULE.

[See section 2 (2).]

Acts Amended.

Name of Act.	Amendments.
The Code of Civil Procedure, 1908 (Act V of 1908).	In section 7 and in rule 1 of Order L in the First Schedule,— (a) after the figures “1887” the words and figures “or under the Berar Small Cause Courts Law, 1905” shall be inserted, and (b) for the words “under that Act” the words “under the said Act or Law” shall be substituted.
The Indian Limitation Act, 1908 (IX of 1908).	In Article 161 of the First Schedule, the word “Provincial” in both places where it occurs, shall be omitted, and after the words “Small Causes”, where they occur for the first time, the brackets and words “(other than a Presidency Small Cause Court)” shall be inserted.

Berar Laws.
(The Fourth Schedule.)
THE FOURTH SCHEDULE.

[1941 : Act IV.]

(See section 4.)

Acts which have ceased to have effect and are repealed in Berar.

Year.	Number.	Short Title.
1841	XIX	The Succession (Property Protection) Act, 1841.
1847	XX	The Indian Copyright Act, 1847.
1860	IX	The Employers and Workmen (Disputes) Act, 1860.
1865	X	The Indian Succession Act, 1865.
1865	XXI	The Parsi Intestate Succession Act, 1865.
1881	V	The Probate and Administration Act, 1881.
1881	VI	The District Delegates Act, 1881.
1889	VII	The Succession Certificate Act, 1889.
1911	XII	The Indian Factories Act, 1911.
1912	V	The Provident Insurance Societies Act, 1912.
1912	VI	The Indian Life Assurance Companies Act, 1912.
1914	VIII	The Indian Motor Vehicles Act, 1914.
1919	X	The Excess Profits Duty Act, 1919.
1923	X	The Indian Paper Currency Act, 1923.
1926	XIX	The Indian Finance Act, 1926.
1927	V	The Indian Finance Act, 1927.
1928	XX	The Indian Insurance Companies Act, 1928.
1929	X	The Indian Census Act, 1929.
1933	XIII	The Safeguarding of Industries Act, 1933.
1935		The Criminal Law Amendment Act, 1935.
1936	I	The Italian Loans and Credits Prohibition Act, 1936.

THE ASSAM RIFLES ACT, 1941.

Act No. V Of 1941.

[17th March, 1941.]

An Act to provide for the regulation of and the maintenance of discipline in the Assam Rifles.

WHEREAS it is expedient to provide for the regulation of and the maintenance of discipline in the Assam Rifles;

It is hereby enacted as follows:—

1. (1) This Act may be called the Assam Rifles Act, 1941.

Short title,
extent and
application.

(2) It extends to the whole of Assam and applies to all members of the Assam Rifles wherever they may be serving.

2. In this Acts unless there is anything repugnant in the subject or context,—

(1) “active service” means service at outposts, or against hostile tribes or other persons in the field;

(2) “Commandant” or “Assistant Commandant” means a person appointed by the Central Government to be Commandant or an Assistant Commandant of the Assam Rifles;

Balikara frontier tract, the political officer,
Tirah Frontier tract, the political officers,
Abhis Hills District and the political Officer,
Mishini Hills District.

after he has signed the statement in the Schedule in accordance with the provisions of subsection (2) of section 1 and section 2 and

and a non-combatant appointed as such, whether before or after the commencement of the Assam Rifles (Amdt.) Act, 1951.

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same class as, himself, and

(b) any Assistant Commandant or Commandant;

(6) the expressions “reason to believe”, “criminal force”, “assault”, “fraudulently” and “voluntarily causing hurt” have the meanings assigned to them respectively in the Indian Penal Code.

3. General superintendence and control of the Assam Rifles shall be exercised by such person or authority as the Central Government

General Superintendence and control of the force.

¹ For Statement of Objects and Reasons, see Gazette of India, 1940, Pt. V, p. 62.

may appoint in this behalf, and, in the exercise of such superintendence and control, the person or authority so appointed shall be governed by such rules and orders as the Central Government may make in this behalf.

Appoint-
ment and
discharge.

4. (1) The appointment of all riflemen shall rest with the Commandant.

(2) Before any person is appointed to be a rifleman, the statement in the Schedule shall be read and if necessary explained to him in the presence of a Magistrate, Commandant or Assistant Commandant, and shall be signed by him in acknowledgement of its having been so read to him.

(3) A rifleman shall not be entitled to be discharged except in accordance with the terms of the statement which he has signed under this Act or under the Assam Rifles Act, 1920.

Assam Act
I of 1920.

Classes &
rank.

5. Classes and rank.- (1) There may be all or any of the classes of riflemen specified in the table hereunder, namely:-

TABLE.

Combatants (1)	Non-combatants (2)
i) Subadars-Major	i) Hospital attendants
ii) Subadars	ii) Cooks
iii) Jamadars and Trans- port Jamadars	iii) Water-carriers
iv) Havildars-Major	iv) Cart-men
v) Havildars and Dafa- dars	v) Range-warders
vi) Nalbandis	vi) Barbers
vii) Naiks	vii) Waghermen
viii) Lance Naiks	viii) Sweepers
ix) Buglers, riflemen and mule drivers.	

Heinous
offences.

and such grades in each class as the Central Government may from time to time direct.

(2) The persons specified in column 1 of the table in sub-section (1) shall take rank in the order mentioned in that column.

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(4) in the presence of an enemy or of any person in arms against whom it is his duty to act, shamefully casts away his arms or his ammunition, or intentionally uses words or any other means to induce any other rifleman to abstain

from acting against the enemy, or to discourage any other rifleman from acting against the enemy; or

- (e) directly or indirectly holds correspondence with, or communicates intelligence to, or assists or relieves any person in arms against the State, or omits to discover immediately to his Commanding or other superior officer any such correspondence or communications coming to his knowledge; or
- (f) directly or indirectly assists or relieves with money, victuals or ammunition, or knowingly harbours or protects, any enemy or person in arms against the State;

or who, while on active service,—

- (g) disobeys the lawful command of his superior officer; or
- (h) deserts or attempts to desert the service; or
- (i) being a sentry, sleeps upon his post, or quits it without being regularly relieved or without leave; or
- (j) leaves his Commanding Officer, or his post or party, to go in search of plunder; or
- (k) quits his guard, picquet, party or patrol without being regularly relieved or without leave; or
- (l) uses criminal force to, or commits an assault on, any person bringing provisions or other necessities to camp or quarters, or forces a safeguard, or breaks into any house or other place for plunder, or plunders, destroys or damages any property of any kind; or
- (m) intentionally causes or spreads a false alarm in action or in camp, garrison or quarters;

shall be punished with transportation for life, or with imprisonment which may extend to fourteen years, or with fine which may extend to five hundred rupees, or with both such imprisonment and fine.

7. A rifleman who—

- (a) is in a state of intoxication when or or detailed for any duty, or on parade, or on the line of march, or
- (b) strikes, or forces or attempts to force, any sentry; or
- (c) being in command of a guard, picquet or patrol, refuses to receive any prisoner duly committed to his charge, or whether in such command or not, releases any prisoner without proper authority or negligently suffers any prisoner to escape; or
- (d) being deputed to any guard, picquet or patrol, quits it without being regularly relieved or without leave; or
- (e) being in command of a guard, picquet or patrol, permits gambling or other behaviour prejudicial to good order and discipline; or

Other offences including acts prejudicial to good order and discipline.

- (f) being under arrest or in confinement, leaves his arrest or confinement before he is set at liberty by proper authority; or
- (g) is grossly insubordinate or insolent to his superior officer in the execution of his office; or
- (h) refuses to superintend or assist in the making of any field work or other military work of any description ordered to be made either in quarters or in the field; or
- (i) strikes or otherwise ill-uses any rifleman subordinate to him in rank or position; or
- (j) being in command at any post or on the march and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has committed any riot or trespass, fails, on proof of the truth of the complaint, to have due reparation made as far as possible to the injured person and to report the case to the proper authority; or
- (k) designedly or through neglect injures or loses or fraudulently or without due authority disposes of his arms, clothes, tools, equipment, ammunition, accoutrements or other necessaries, or any such articles entrusted to him or belonging to any other person; or
- (l) malingers, feigns or produces disease or infirmity in himself, or intentionally delays his cure, or aggravates his disease or infirmity; or
- (m) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person; or
- (n) commits extortion, or without proper authority exacts from any person carriage, portage, or provisions; or
- (o) designedly or through neglect kills, injures, makes away with, ill-treats or loses his horse, or any animal used in the public service;

or who, while not on active service,—

- (p) disobeys the lawful command of his superior officer; or
- (q) plunders, destroys or damages any property of any kind; or
- (r) being a sentry, sleeps upon his post, or quits it without being regularly relieved or without leave; or
- (s) deserts or attempts to desert the service; or
- (t) neglects to obey any battalion or other orders; or commits any act or omission prejudicial to good order and discipline such act or omission not constituting an offence under the Indian Penal Code or other Act in force in Assam,

shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two hundred rupees, or with both.

8. (1) A District Magistrate or a Commandant, or subject to the control of the Commandant, an Assistant Commandant, or subject to the control of the Commandant an officer not below the rank of a Jemadar commanding a separate detachment or an outpost or in temporary command at the headquarters of a District during the absence of the District Magistrate, Commandant and Assistant Commandant, may, without a formal trial, award to any rifleman below the rank of a Naik, who is subject to his authority, any of the following punishments for the commission of any petty offence against discipline, which is not otherwise provided for in this Act, or which is not of a sufficiently serious nature to call for prosecution before a criminal Court, that is to say,—

- (a) imprisonment in the Quarter Guard, or such other place as may be considered suitable, for a term which may extend to twenty-eight days when the order is passed by a District Magistrate or a Commandant or to seven days when it is passed by any other officer;
- (b) punishment drill, extra guard, fatigue or other duty, not exceeding twenty-eight days in duration, with or without confinement to lines;
- (c) forfeiture of pay and allowances for a period not exceeding twenty-eight days.

(2) Any of the punishments specified in sub-section (1) may be awarded separately or in combination with any one or more of the

Explanation.— For the purposes of this section every non-combatant shall be deemed to be below the rank of a naik.

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also dismissed from the Assam Rifles he may, if the convicting Court or the District Magistrate so directs, be confined in the Quarter Guard or such other place as the Court or Magistrate may consider suitable.

10. A Commandant or Assistant Commandant shall be entitled to all the privileges which a police officer has under sections 42 and 43 of the Police Act, 1861, section 125 of the Indian Evidence Act, 1872, and any other enactment for the time being in force.

Privileges of Commandants and Assistant Commandants.

11. For the purposes of sections 128, 130 and 131 of the Code of Criminal Procedure, 1898, a Commandant, Assistant Commandant, Subadar-Major, Subadar or Jemadar of the Assam Rifles shall be deemed to be an officer, a Havildar-Major, Havildar or Naik shall be deemed to be a non-commissioned officer and a bugler or rifleman shall be deemed to be a soldier of His Majesty's Army. *the Indian Army*

Members of the Assam Rifles to be deemed part of his Majesty's Army for certain purposes.

Power of Central Government to make rules.

12. The Central Government may, as regards the Assam Rifles, make such orders and rules consistent with this Act, as it thinks expedient, relative to the several matters respecting which the Inspector General of Police, with the approval of the Provincial Government, may, as regards the Police Force, frame orders and rules under section 12 of the Police Act, 1861.

V of 1861.

Cesser of Assam Act I of 1920 and of appointment of riflemen as police officers.

13. The Assam Rifles Act, 1920, shall cease to apply to the Assam Rifles and to riflemen, and all riflemen shall, on the commencement of this Act, cease to be police officers under the Police Act, 1861.

Assam Act I of 1920.

V of 1861.

THE SCHEDULE.

STATEMENT.

[See sections 2 (4) and 4 :2).]

1. After you have served for four years in the first instance in the Assam Rifles you have the option of extending the term of your service in the Assam Rifles indefinitely, so long as the Commandant is satisfied with your services, or of claiming your discharge at any time, making your application through the officer to whom you may be subordinate, to a Commandant of the Assam Rifles or to the Magistrate of the District in which you may be serving; and you will be granted your discharge after two months from the date of your application, unless you are on active service or unless your discharge would cause the vacancies in the Assam Rifles to exceed one-tenth of the sanctioned strength. In either of the above cases you must continue to serve in the Assam Rifles until the objection is waived by competent authority or removed.

*

* or as a hospital attendant, cook, water cartman, range-warder, banda washerman, or sweeper,

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3. On your deputation for a specialist course at an Army Training Centre you must sign an undertaking, before leaving the battalion to proceed on the course, that you will not, in spite of the provisions of paragraph 1 above, apply for discharge during the four years following your attendance at the Army Training Course.

4. On your deputation to the Educational or Veterinary Course you must sign an undertaking, before leaving the battalion to proceed on the Course, that you will not, in spite of the provisions of paragraph 1 above, apply for discharge during the eight years following your attendance at the Course.

5. In the event of your re-enlistment after you have been discharged, you will have no claim to reckon for pension or any other purpose your service previous to your discharge.

Signature of rifeman in acknowledgment of the above having been.....
read to him. A. B.

Signed in my presence after I had ascertained that A. B. understood the purport of what he signed C. D.

Magistrate, Commandant or Assistant
Commandant.

THE INDIAN FINANCE ACT, 1941

Act No. VII of 1941¹.

[31st March, 1941.]

An Act² * * * to fix rates of income-tax and super-tax and to continue the charge and levy of excess profits tax and fix the rate at which excess profits tax shall be charged.

WHEREAS it is expedient² * * * to fix rates of income-tax and super-tax and to continue the charge and levy of excess profits tax and fix the rate at which excess profits tax shall be charged:

It is hereby enacted as follows:—

(2) It extends to the whole of India except the territories which immediately before the 1st November 1956, were comprised in part B States.

- | | |
|---|--|
| 4. [<i>Excise Duty on Mechanical Lighters.</i>]
5. [<i>Import Duty on Artificial Silk Yarn and Thread.</i>]
6. [<i>Inland Postage rates.</i>] | } Rep. by the Repealing and Amending Act, 1945 (VI of 1945), s.2 and Sch. I. |
|---|--|

¹ For Statement of Objects and Reasons, see Gazette of India 1941, Pt. V. p. 76.

The Act has been applied to the partially excluded areas in Madras, see Madras Govt. Notfn. No. 40. dated the 6th May, 1941, and to the Darjeeling Dist. with effect from 1st April, 1941, see the late Bengal Govt. Notfn. No. 7079-F.B. dated the 5th July 1941.

² Certain words rep. by the Repealing and Amending Act, 1945 (6 of 1945), s. 2 and Sch. I.

³ Subs. by the A.O. 1948 for "the whole of British India".

Income tax
and Super-
tax

7. (1) Subject to the provisions of sub-sections (2) and (3)—

- (a) income-tax for the year beginning on the 1st day of April, 1941, shall be charged at the rates specified in Part I of Schedule II to the Indian Finance Act, 1939 increased in each case by a surcharge for the purposes of the Central Government amounting to one-third of each such rate;
- (b) rates of super-tax for the year beginning on the 1st day of April, 1941, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be the rates specified in ^{XI of 1922.} Part II of Schedule II to the Indian Finance Act, 1939, increased—
 - (i) in the case of the rate applicable to a company, by a surcharge amounting to one-third of that rate, and
 - (ii) in the case of every other rate, by a surcharge for the purposes of the Central Government amounting to one-third of each such rate:

Provided that in the case of an association of persons being a co-operative society, other than the Sanikatta Saltowners' Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1912, or under an Act of the Provincial Legislature governing the registration of Co-operative Societies, the rates of super-tax for the year beginning on the 1st day of April, 1941, shall be the rates of super-tax specified in the proviso to clause (b) of sub-section (1) of section 7 of the Indian Finance Act, 1940, increased in each ^{II of 1912.} ^{XVI of 1940} case by a surcharge for the purposes of the Central Government amounting to one-third of each such rate.

(2) In making any assessment for the year ending on the 31st day of March, 1942,—

- (a) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" or under the head "Interest on Securities" or any income from dividends in respect of which he is deemed under section 49B of the Indian Income-tax Act, 1922, to have ^{XI of 1922.} paid income-tax imposed in ¹ ~~the Provinces~~, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1940, read with sub-section (1) of section 3 of the Indian Finance (No. 2) Act, 1940, on his ^{XVI of 194} total income the same proportion as the amount of such inclusions bears to his total income;
- (b) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" on which super-tax has been or might have been deducted under the provisions of sub-section (2) of section 18 of the

¹ Subs. by the A. O. 1943 for "British India".

- XI of 1922, Indian Income-tax Act, 1922, the super-tax payable by the assessee on that portion of his total income which consists of such inclusions shall be an amount bearing to the total amount of super-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1940, read with sub-section (1) of section 3 of the Indian Finance (No. 2) Act, 1940, on his total income the same proportion as the amount of such inclusions bears to his total income.
- XVI of 1940,
- XI of 1922, (3) In cases to which section 17 of the Indian Income-tax Act, 1922 applies, the tax chargeable shall be determined as provided in that section but with reference to the rates imposed by sub-section (1) of this section, and in accordance with the provisions of sub-section (2) of this section where applicable.
- (4) For the purposes of this section and of the rates of tax imposed thereby, the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922.
- XI of 1922,
- XV of 1940, 8. (1) In sub-clause (a) of clause (6) of section 2 of the Excess Profits Tax Act, 1940, for the words and figures "31st day of March, 1941," the words and figures "31st day of March, 1942," shall be substituted. Continuance, of and rate of Excess Profits Tax.
- XV of 1940, (2) The excess profits tax imposed by section 4 of the Excess Profits Tax Act, 1940, shall, in respect of any chargeable accounting period beginning after the 31st day of March, 1941, be an amount equal to sixty-six and two-thirds per cent. of the amount by which the profits of the business during that chargeable accounting period exceed the standard profits.

THE SCHEDULE.—Rep. by the Repealing and Amending Act, 1945 (VI of 1945), s. 2 and Sch. I.

THE DELHI RESTRICTION OF USES OF LAND ACT, 1941.

Act No. XII of 1941¹.

[8th April, 1941]

An Act to regulate in the Province of Delhi the use of
land for purposes other than agricultural purposes.

WHEREAS it is expedient to regulate in the Province of Delhi
the use of land for purposes other than agricultural purposes:

¹ For Statement of Objects and Reasons, see Gazette of India, 1941, Pt. V, p. 69; and for Report of Select Committee, see *ibid*, p. 110.

It is hereby enacted as follows:—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Delhi Restriction of Uses of Land Act, 1941.

(2) It extends to the ^{territory} ~~Province~~ of Delhi.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “agriculture” includes horticulture and the planting and up-keep of orchards;

(2) “building” has the same meaning as in clause (2) of section 3 of the Punjab Municipal Act, 1911;

Punj. Act
III of 1911

(3) “Chief Commissioner” means the Chief Commissioner of Delhi;

(4) “Deputy Commissioner” means the Deputy Commissioner of Delhi and includes any authority, not being an officer employed by the Delhi Improvement Trust, appointed by the Chief Commissioner, by notification in the official Gazette, to perform all or any of the functions of the Deputy Commissioner under this Act;

(5) “place of worship” includes an *imambara*, *dargah*, *karbala* or *takya*;

(6) “prescribed” means prescribed by rules made under this Act;

(7) “road” means a metalled road maintained by the Central Government or by a local authority; and

(8) the expression “to erect or re-erect” in relation to any building has the same meaning as in clause (5) of section 3 of the Punjab Municipal Act, 1911.

Punj. Act
III of 1911.

Declaration
of controlled
area.

3. (1) The Chief Commissioner may, with the previous sanction of the Central Government, by notification in the official Gazette, declare any land adjacent to and within a distance of four hundred and forty yards from the centre line of any road to be a controlled area for the purposes of this Act.

(2) Not less than three months before making a declaration under sub-section (1) the Chief Commissioner shall cause to be published in the official Gazette and in at least two newspapers printed in a language other than English a notification stating that he proposes, with the previous sanction of the Central Government, to make such a declaration and specifying therein the boundaries of the land in respect of which the declaration is proposed to be made, and copies of every such notification or of the substance thereof shall be published by the Deputy Commissioner in such manner as he thinks fit at his office and in

every revenue estate of which any part is included within the said boundaries.

(3) Any person interested in any land included within the said boundaries may, at any time before the expiration of thirty days from the last date on which a copy of such notification is published by the Deputy Commissioner, object to the making of the declaration or to the inclusion of his land or any part of it within the said boundaries.

(4) Every objection under sub-section (3) shall be made to the Deputy Commissioner in writing, and the Deputy Commissioner shall give to every person so objecting an opportunity of being heard either in person or by pleader, and shall after all such objections have been heard and after such further enquiry, if any, as he thinks necessary, forward to the Chief Commissioner the record of the proceedings held by him together with a report setting forth his recommendations on the objections.

(5) If before the expiration of the time allowed by sub-section (3) for the filing of objections no objection has been made, the Chief Commissioner may proceed at once to the making of a declaration under sub-section (1). If any such objections have been made, the Chief Commissioner shall consider the record and the report referred to in sub-section (4) and shall hear any parties applying to be heard and may either—

(a) abandon the proposal to make a declaration under sub-section (1), or

(b) make such a declaration in respect of either the whole or a part or parts of the land included within the boundaries specified in the notification under sub-section (2).

(6) For the purposes of sub-section (3) a person shall be deemed to be interested in land if he is a "person interested" as defined in clause (b) of section 3 of the Land Acquisition Act, 1894 for the purposes of that Act or, where the land is land occupied by or for the purposes of a mosque, *imambara*, *dargah*, *karbala*, *takya* or Muslim graveyard, if he is a Muslim.

I of 1894.

(7) A declaration made under sub-section (1) shall, unless and until it is withdrawn, be conclusive evidence of the fact that the area to which it relates is a controlled area.

4. (1) The Deputy Commissioner shall deposit at his office and at the office of the Municipal Committee, New Delhi, and at such other places as he considers necessary, plans showing all lands declared to be controlled areas for the purposes of this Act, and setting forth the nature of the restrictions applicable to the land in any such controlled area.

Plans of controlled areas to be deposited at certain offices.

(2) The plans so deposited shall be available for inspection by the public free of charge at all reasonable times.

Restrictions
on building,
etc., in a
controlled
area.

5. No person shall erect or re-erect any building, or make or extend any excavation, or lay out any means of access to a road in a controlled area except with the previous permission of the Deputy Commissioner in writing.

Application
for permis-
sion to build,
etc., and the
grant or re-
fusal of such
permission.

6. (1) Every person desiring to obtain the permission referred to in section 5 shall make an application in writing to the Deputy Commissioner in such form and containing such information in respect of the building, excavation or means of access to which the application relates as may be prescribed.

(2) On receipt of such application the Deputy Commissioner, after making such enquiry as he considers necessary, shall, by order in writing, either—

(a) grant the permission, subject to such conditions, if any, as may be specified in the order; or

(b) refuse to grant such permission.

(3) When the Deputy Commissioner grants permission subject to conditions under clause (a) of sub-section (2) or refuses to grant permission under clause (b) of sub-section (2), the conditions imposed or the grounds of refusal shall be such as are reasonable having regard to the circumstances of each case.

(4) The Deputy Commissioner shall not refuse permission to the erection or re-erection of a building, not being a dwelling house, if such building is required for purposes subservient to agriculture, nor shall the permission to erect or re-erect any such building be made subject to any conditions other than those which may be necessary to ensure that the building will be used solely for the purposes specified in the application for permission.

(5) The Deputy Commissioner shall not refuse permission to the erection or re-erection of a building which was in existence on the date on which the declaration under sub-section (1) of section 3 was made, nor shall he impose any conditions in respect of such erection or re-erection unless it involves the addition of one or more storeys to the building or the extension of the plinth area of the building by more than one-eighth of the original plinth area, or there is a probability that the building will be used for a purpose other than that for which it was used on the date on which the said declaration was made.

(6) If at the expiration of a period of three months after an application under sub-section (1) has been made to the Deputy Commissioner no order in writing has been passed by the Deputy Commissioner, permission shall be deemed to have been given without the imposition of any conditions.

(7) The Deputy Commissioner shall maintain a register with sufficient particulars of all permissions given by him under this section and the register shall be available for inspection without charge by all persons interested and such persons shall be entitled to take extracts therefrom.

7. (1) Any person aggrieved by an order of the Deputy Commissioner under sub-section (2) of section 6 granting permission subject to conditions or refusing permission may within thirty days from the date of such order prefer an appeal to the Chief Commissioner.

(2) The order of the Chief Commissioner on appeal shall be final.

8. (1) No person shall be entitled to claim compensation under this or any other Act for any injury, damage or loss caused or alleged to have been caused by an order—

(a) refusing permission to make or extend an excavation, or granting such permission but imposing conditions on the grant, or

(b) refusing permission to lay out a means of access to a road, or granting such permission but imposing conditions on the grant, or

(c) granting permission to erect or re-erect a building but imposing conditions on the grant.

(2) When an order has been made refusing permission to erect or re-erect a building any person who has exercised the right of appeal given by sub-section (1) of section 7 may, within three months of the date of the order of the Chief Commissioner, make to the Chief Commissioner a claim for compensation on the ground that his interest in the land concerned is injuriously affected by the said order:

Provided that no claim for compensation may be made under this sub-section in respect of any land situated in a controlled area adjoining a road which has been constructed after the commencement of this Act or which was not at the commencement of this Act a road within the meaning of clause 1(7) of section 2.

(3) On receipt of a claim under sub-section (2) the Chief Commissioner shall either proceed to acquire the land concerned under the Land Acquisition Act, 1894, or transfer the claim for disposal to an officer exercising the powers of a Collector under the said Act:

Provided that in case the Chief Commissioner decides to acquire the land, the claimant shall be entitled to be repaid by the acquiring authority the amount of expense which he may have properly incurred in connection with the preparation and submission of his claim for compensation under this section, and in default of agreement such amount shall be determined by the authority deciding the value of the land in the proceedings under the Land Acquisition Act, 1894.

(4) Nothing in this section shall be deemed to preclude the settlement of a claim by mutual agreement.

¹ Subs. by the Repealing and Amending Act, 1942 (25 of 1942), s. 3 and Sch. II, for, "(4)".

Compulsory
acquisition.

9. If the Chief Commissioner decides to acquire the land under the Land Acquisition Act, 1894, then, notwithstanding anything contained in that Act,—

(i) proceedings under section 5A of that Act shall not be required;

(ii) the notification under section 6 of that Act shall be published within six months from the date of institution of the claim, failing which the claim shall be transferred for disposal to an officer exercising the powers of a Collector under that Act;

(iii) the market value of the land shall be assessed as though no declaration under section 3 (1) had been made in respect of the area in which it is situated and no restrictions upon its use and development had been imposed, any compensation already paid to the claimant or to any of his predecessors in interest for injurious affection being deducted from the market value as so assessed.

Amount of
compensation
how
determined.

10. (1) When a claim is transferred for disposal under section 8 or section 9 to an officer exercising the powers of a Collector under the Land Acquisition Act, 1894, such officer shall make an award determining the amount of compensation, if any, payable to the claimant

(2) The amount of compensation awarded under sub-section (1) shall in no case exceed—

(a) the amount that would have been payable if the land had been acquired under section 9 or

(b) the difference between the market value of the land in its existing condition having regard to the restrictions actually imposed upon its use and development by the order refusing permission to erect or re-erect a building thereon, and its market value immediately before the publication under sub-section (2) of section 3 of the notification in pursuance of which the area in which it is situated was declared to be a controlled area,

and no compensation shall be awarded under sub-section (1)—

(i) unless the claimant satisfies the officer making the award that proposals for the development of the land which at the date of the application under sub-section (1) of section 6 are immediately practicable, or would have been so, if this Act had not been passed, are prevented or injuriously affected by the restrictions imposed under this Act, or

(ii) if and in so far as the land is subject to substantially similar restrictions in force under some other enactment which were so in force at the date when the restrictions were imposed under this Act, or

(iii) if compensation in respect of the same restrictions in force under this Act or of substantially similar restrictions in force under some other enactment has already been paid in respect of the land to the claimant or to any predecessor in interest of the claimant.

of 1894. (3) The provisions of Parts III, IV, V and VIII of the Land Acquisition Act, 1894, shall so far as may be apply to an award made under sub-section (1) as though it were an award made under that Act.

11. Nothing in this Act shall affect the power of any authority to acquire land or to impose restrictions upon the use and development of land under any other enactment for the time being in force. Saving for other enactments.

12. (1) No land within a controlled area shall be used for the purposes of a charcoal-kiln, pottery-kiln or lime-kiln and no land either within or outside a controlled area shall be used for the purposes of a brick-field or brick-kiln except under, and in accordance with the conditions of, a licence from the Chief Commissioner which shall be renewable annually. Prohibition of use of any land as a brick-field, etc., without a licence.

(2) The Chief Commissioner may charge such fees for the grant and renewal of such licences and may impose such conditions in respect thereof as may be prescribed.

(3) No person shall be entitled to claim compensation under this, or any other Act for any injury, damage or loss caused or alleged to have been caused by the refusal of a licence under sub-section (1).

13. (1) Any person who—

(a) erects or re-erects any building or makes or extends any excavation or lays out any means of access to a road in contravention of the provisions of section 5 or in contravention of any conditions imposed by an order under section 6 or section 7, or

(b) uses any land in contravention of the provisions of sub-section (1) of section 12.

Offences and penalties.

shall be punishable with fine which may extend to five hundred rupees and, in the case of a continuing contravention, with a further fine which may extend to fifty rupees for every day after the date of the first conviction during which he is proved to have persisted in the contravention.

(2) Without prejudice to the provisions of sub-section (1), the Deputy Commissioner may order any person who has committed a breach of the provisions of the said sub-section to restore to its original state or to bring into conformity with the conditions which have been violated, as the case may be, any building or land in respect of which a contravention such as is described in the said sub-section has been committed, and if such person fails to do so within three months of the order may himself take such measures as may appear to him to be necessary to give effect to the order, and the cost of such measures shall be recoverable from such person as an arrear of land-revenue.

14. No Court inferior to that of a Magistrate of the first class shall try any offence punishable under this Act. Trial of offences.

Protection
of persons
acting under
this Act.

15. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Savings

16. Nothing in this Act shall apply to—

(a) the erection or re-erection of buildings upon land included in the inhabited site of any village as defined in the revenue records;

(b) the erection or re-erection of a place of worship or a tomb or cenotaph or of a wall enclosing a graveyard, place of worship, cenotaph or *samadhi* on land which is at the time a notification under sub-section (2) of section 3 is published by the Chief Commissioner occupied by or for the purposes of such place of worship, tomb, *samadhi*, cenotaph or graveyard;

(c) excavations (including wells) made in the ordinary course of agricultural operations;

(d) the construction of an unmetalled road intended to give access to land solely for agricultural purposes.

Power to
make rules.

17. (1) The Chief Commissioner may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:—

(a) the form in which applications under sub-section (1) of section 6 shall be made and the information to be furnished in such applications;

(b) the regulation of the laying out of means of access to roads;

(c) the fees to be charged for the grant and renewal of licences under section 12 and the conditions governing such licences.

(3) All rules made under this section shall be subject to the condition of previous publication, which publication shall be made in the official Gazette and in at least two newspapers printed in a language other than English; and the date to be specified under clause (3) of section 23 of the General Clauses Act, 1897, shall not be less than two months from the date on which the draft of the proposed rules was published. X of 1897.]

THE MINES MATERNITY BENEFIT ACT, 1941.

ACT No. XIX OF 1941.¹

[26th November, 1941.]

An Act to regulate the employment of women in mines for a certain period before and after childbirth and to provide for payment of maternity benefit to them.

WHEREAS it is expedient to regulate the employment of women in mines for a certain period before and after childbirth and to provide for payment of maternity benefit to them;

It is hereby enacted as follows:—

1. (1) This Act may be called the Mines Maternity Benefit Act, 1941. Short title, extent and commencement.

(2) It extends to ^{whole} ~~all the Provinces of India.~~ ^{of Jammu & Kashmir} ~~except the State~~

(3) It shall come into force on such ³date as the Central Government may, by notification in the official Gazette, appoint.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions

(a) “child” includes a still-born child;

(b) “Chief Inspector”, “Inspector”, “employed”, “mine” and “owner” have the meanings assigned, respectively, to these expressions in section 3 of the Indian Mines Act, 1923;

(c) “manager” means the manager of the mine appointed in accordance with the provisions of the Indian Mines Act, 1923;

(d) “maternity benefit” means the payment referred to in section 5;

(e) “prescribed” means prescribed by rules made under this Act.

3. “(1) No owner or manager of a mine shall knowingly employ a woman and no woman shall engage in employment in any mine during the four weeks following the day on which she is delivered of a child.” Prohibition of employment of, and work by, women during certain period.

¹ For Statement of Objects and Reasons, see Gazette of India, 1941, Pt. V, p. 139. This Act has been applied to—

(1) Partially excluded areas in the Province of Orissa, see Orissa Govt. Notification No. 1005-111-C-244-Com., dated 4th March 1944;

(2) Darjeeling district with effect from 14th June 1945, see the late Bengal Notification No. 2335-Com., dated 8th June 1945.

² Subs. by the A. O. 1948² for “the whole of British India”.

³ The 28th December 1942, see Gazette of India, 1943, Pt. I, p. 32.

⁴ Section 3 was renumbered as sub-section (1) by s. 2. of the Mines Maternity Benefit (Amendment) Act, 1945 (10 of 1945).

IV of 1923.

IV of 1923.

111/51

¹[(2) No owner or manager of a mine shall employ any woman below ground in the mine—

(a) if he has reason to believe or if she has informed him that she is likely to be delivered of a child within ten weeks;

(b) if she has to the knowledge of the management been delivered of a child within the preceding twenty-six weeks;

(c) during the period of ten weeks following the twenty-six weeks referred to in clause (b)—

(i) for more than four hours in a day unless a *creche* is provided at the mine;

(ii) in any case, for more than four hours at any one time:

Provided that where the woman informs the management that the child of which she was delivered has died, the provisions of clause (c) shall not apply after the management has with due diligence verified the correctness of her statement.]

Right to
obtain leave
of absence
in pregnancy
and after
delivery.

4. (7) If any woman employed in a mine who is pregnant gives notice either orally or in writing in the prescribed form to the manager of the mine that she expects to be delivered of a child within one month from the date of such notice, the manager shall permit her if she so desires to absent herself from work up to the day of her delivery and such absence shall be treated as a period of authorised absence on leave:

Provided that ²[except in the case of a woman employed below ground in the mine] the manager may, on undertaking to defray the cost of such examination, require the woman to be examined by a qualified medical practitioner or midwife, and, if the woman refuses to submit to such examination or is certified on such examination as not pregnant or not likely to be delivered of a child within one month he may refuse such permission.

³[(2) If any woman employed below ground in a mine gives notice either orally or in writing in the prescribed form to the manager of the mine that she expects to be delivered of a child within ten weeks from the date of such notice, the manager may, on undertaking to defray the cost of such examination, require the woman to be examined within three days by a qualified medical practitioner or midwife, and shall permit her if she so desires to absent herself from work in any capacity in the mine prior to the said examination, and unless he obtains a certificate that the woman is not pregnant or not likely to be delivered of a child within ten weeks or the woman refuses to submit to such examination, up to the day of her delivery, and such absence shall be treated as a period of authorised absence on leave.

¹ Ins. by s. 2 of the Mines Maternity Benefit (Amendment) Act, 1945 (10 of 1945).

² Ins. by s. 3, *ibid.*

³ Subs. for the original sub-section (2), *ibid.*

(3) The examination referred to in the proviso to sub-section (1) or in sub-section (2) shall, if the woman so desires, be carried out by a woman.

(4) The absence of a woman in the period during which she is entitled to maternity benefit under this Act shall be treated as authorised absence on leave.]

5. ¹[(1)] Every woman ²[other than a woman to whom the provisions of sub-section (2) apply] employed in a mine who has been continuously employed in that mine or in mines belonging to the owner of that mine for a period of not less than six months preceding the date of her delivery shall, if she complies with the conditions imposed by this Act be entitled to receive, and the owner of the mine shall be liable to make to her, in accordance with the provisions of this Act, a payment at the rate of ³[twelve annas] a day for every day * * * during the four weeks immediately preceding and including the day of her delivery and for each day of the four weeks following her delivery:

Right to and liability for payment of maternity benefit.

⁴[Provided that no such payment shall be made for any day on which she attends work and receives payment therefor during the four weeks preceding her delivery.]

¹[(2) Every woman who has worked below ground in a mine or mines of the same owner for not less than ninety days in all during a period not exceeding six months immediately preceding the date on which clause (a) of sub-section (2) of section 3 becomes applicable to her case shall, if she complies with the other conditions imposed by this Act, be entitled to receive and the owner of the mine shall be liable to make to her, in accordance with the provisions of this Act, a payment at the rate of six rupees a week for the ten weeks immediately preceding her delivery and for the six weeks following her delivery.]

Explanation.—Periods of casual absence as defined by rules made under section 15 or authorised absence on account of illness or leave shall count as employment in determining whether employment has been continuous.

6. (1) The Central Government may by rules made under section 15 provide that a woman entitled to maternity benefit under this Act shall, if at the time of her delivery she utilized the services of a qualified midwife or other trained person, receive in addition to the maternity benefit due to her a bonus not exceeding in amount three rupees:

Payment of bonus.

Provided that she shall not receive such bonus if at the place chosen by her for her confinement she would have been entitled free of charge to the services of a qualified midwife or other trained person provided by the owner of the mine.

¹ S. 5 was re-numbered as sub-section (1) and sub-section (2) ins. by s. 4 of the Mines Maternity Benefit (Amendment) Act, 1945 (10 of 1945).

² Ins., *ibid.*

³ Subs. for "eight annas", *ibid.*

⁴ The words "on which she is absent from work owing to her confinement" were rep. by s. 2 of the Mines Maternity Benefit (Amendment) Act, 1943 (18 of 1943).

⁵ Ins. *ibid.*

(2) Such rules may further provide for the determination by the Provincial Government of the amount of the bonus, and of the qualifications which shall be possessed by qualified midwives and other trained persons for the purposes of this section.

Notice
of delivery
to be given
to manager.

7. A woman entitled to maternity benefit under this Act, unless she has given the notice referred to in sub-section (1) ¹[or sub-section (2) as the case may be.] of section 4, shall on being delivered of a child give notice of her delivery in the prescribed manner to the manager before the expiry of seven days from the date of her delivery, and shall before the expiry of six months from such date furnish proof of the prescribed nature to the manager both of her delivery and of the date of her delivery:

Provided that a woman giving notice under section 4 or this section may therein nominate a person for the purposes of sub-section (2) of section 9.

Payment of
maternity
benefit.

8. (1) Where a woman entitled to maternity benefit has given the notice referred to in sub-section (1) of section 4 and has obtained permission to absent herself from work up to the date of her delivery, the manager shall either at once or within three days pay to her maternity benefit for four weeks in advance.

²[(1A) Where a woman entitled to maternity benefit has given the notice referred to in sub-section (2) of section 4, the manager shall within three days pay to her maternity benefit for ten weeks in advance, unless, within the said three days as a result of the examination referred to in that sub-section, he obtains a certificate that she is not pregnant or not likely to be delivered of a child within ten weeks or the woman refuses to submit to such examination.]

(2) A woman entitled to maternity benefit who has been delivered of a child shall, on furnishing the proof referred to in section 7,—

(a) if she has received an advance payment under sub-section (1) ²[or sub-section (1A)], be paid the balance of the maternity benefit due to her at the end of the fourth week from the date of her delivery or within three days of the furnishing of proof, whichever date is later;

(b) if she has received no such advance payment,—

(i) if the proof is furnished, before the end of the fourth week from the date of delivery, be paid at once or within three days so much of the maternity benefit as is then due to her, and be paid the balance at the end of the said fourth week.

(ii) if the proof is furnished after the end of the fourth week from the date of delivery, be paid at once or within three days the whole amount of the maternity benefit due to her.

¹ Ins. by s. 5 of the Mines Maternity Benefit (Amendment) Act, 1945 (10 of 1945).

² Ins. by s. 8; *ibid*.

9. (1) If a woman entitled to maternity benefit who has received an advance under sub-section (1) ¹[or sub-section (1A)] of section 8 dies before being delivered of the child, the advance shall not be recoverable.

Disposal of maternity benefit in case of death of women entitled to receive it.

(2) If a woman entitled to maternity benefit having been delivered of a child dies before payment of the maternity benefit, or, where an advance under sub-section (1) ¹[or sub-section (1A)] of section 8 has been made, of the balance of the maternity benefit due to her is made, the amount due to her up to the date of her death shall, on the prescribed proof of the birth and date of the birth of the child and of the death and date of death of the woman being furnished at any time before the expiry of six months from the date of delivery, be paid if the child is living to the person who undertakes the care of the child, and if the child is not living to the person nominated by her under the proviso to section 7 or if she has made no such nomination to the legal representative of the deceased woman.

10. (1) When a woman absents herself from work in accordance with ²[sub-section (1) of section 3 or in circumstances under which in accordance with this Act the absence is to be treated as authorised absence on leave], it shall be unlawful for the manager to dismiss her during or on account of such absence, or to give notice of dismissal on such a day that the notice will expire during such absence.

Prohibition of dismissal during or on account of absence from work owing to confinement.

(2) The dismissal of a woman at any time within six months before she is delivered of a child, if the woman but for such dismissal would have been entitled to maternity benefit under this Act, shall not have the effect of depriving her of that maternity benefit if the Chief Inspector is satisfied that her dismissal was without sufficient cause.

11. (1) Any woman claiming that maternity benefit to which she is entitled under this Act and any person claiming that a payment due under sub-section (2) of section 9 is improperly withheld may make a complaint to the Chief Inspector or any Inspector ³[or any other officer authorised in this behalf by the Central Government].

Power of Chief Inspector or Inspector to direct payments to be made.

(2) On receipt of such complaint or on his own motion without any such complaint being made, the Chief Inspector or Inspector ³[or other officer] may make inquiry or cause an inquiry to be made, and if satisfied that a payment has been wrongfully withheld may direct the payment to be made in accordance with his orders.

12. Any woman who does any work for which she receives payment in cash or kind after she has been permitted under sub-section (1) of section 4 to absent herself from work, or who engages in employment in any mine in contravention of ⁴[sub-section (1) of section 3], shall be

Penalty for contravention of Act by a woman.

¹ Ins. by s.7 of the Mines Maternity Benefit (Amendment) Act, 1945 (10 of 1945).

² Subs. by s. 8, *ibid.* for "section 3, or has obtained permission to absent herself in accordance with section 4".

³ Ins. by s. 9, *ibid.*

⁴ Subs. for "section 3" by s. 10, *ibid.*

punishable with fine which may extend to ten rupees, and, if she is entitled to maternity benefit under this Act shall forfeit her right to any maternity benefit not already paid to her.

Penalty for
contraven-
tion of Act
by owner or
manager.

13. (1) Any owner or manager of a mine, who contravenes any provision of this Act, for which no express penalty is provided, shall be punishable with fine which may extend to five hundred rupees.

(2) The Court imposing the fine may, if the contravention has resulted in depriving a woman of any maternity benefit due to her, order the whole or any part of the fine when paid to, be applied in payment of compensation to the woman for any loss caused to her by the contravention of the provision on account of which the fine has been imposed, and an Appellate Court or the High Court in exercise of its powers of revision may also make such order.

Cognizance
of cases.

14. (1) No prosecution under this Act shall be instituted except by or with the sanction of the Chief Inspector ¹[or of an officer authorised in this behalf by the Central Government].

(2) No Court inferior to that of a Magistrate of the first class shall try an offence punishable under this Act or any rule made thereunder.

(3) No Court shall take cognizance of an offence punishable under this Act or any rule made thereunder, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed:

Provided that in computing the said period of six months any time spent in obtaining the sanction ²* * * required by sub-section (1) shall be excluded.

Power of
Central Gov-
ernment to
make rules.

15. (1) The Central Government may, subject to the condition of previous publication, by notification in the official Gazette, make ³rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) require the maintenance of registers and records for the purposes of this Act and prescribe the form thereof;

(b) prescribe the form of the notices referred to in section 4 and section 7, and require mines to supply copies thereof to women workers;

(c) regulate the examination of women ⁴[referred to in] section 4, and the grant of the certificates therein referred to;

¹ Ins. by s. 11, of the Mines Maternity Benefit (Amendment) Act, 1945 (10 of 1945).

² The words "of the Chief Inspector" were rep., *ibid.*

³ For the Mines Maternity Benefit Rules, 1943, see Gazette of India, 1943, Pt. I, p. 32.

⁴ Subs. for "under the proviso to sub-section (1) of" by s. 12 of Act 10 of 1945.

(d) prescribe the nature of and the method of furnishing the proof referred to in section 7, section 8 and section 9;

(e) regulate the manner of applying for and paying maternity benefit;

(f) assign duties to, and regulate the powers of, the Chief Inspector and Inspectors ¹[and the officers authorised by the Central Government referred to in section 11 and sub-section (1) of section 14], for the purposes of this Act.

(3) Any rule made under this section may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.

16. (1) The manager of every mine in which women are employed shall cause an abstract in the local Indian language of the provisions of this Act and of the rules made thereunder to be exhibited in the mine in such manner that they may come to the notice of every woman employed in the mine.

Abstract of this Act and the rules made thereunder to be exhibited in mines.

(2) For any contravention of the provisions of this section the manager shall be punishable with fine which may extend to one hundred rupees.

17. The Central Government may, by notification in the official Gazette, exempt any mine or class of mines from the operation of this Act

Power of Central Government to exempt mines from operation of Act.

18. The provisions of this Act shall be binding on the Crown.

Act binding on Crown.

THE PROFESSIONS TAX LIMITATION ACT, 1941.

Act No. XX of 1941.²

Repealed

[26th November, 1941.]

An Act to limit to a maximum of fifty rupees per annum the amount payable in respect of any person by way of tax on professions, trades, callings or employments.

26 Geo 5 c.2.

WHEREAS by section 142A of the Government of India Act, 1935, it is provided that no Provincial law relating to taxes for the benefit of a Province, or of a municipality, district board, local board, or other local authority therein, in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income and that the total amount of such tax payable in

¹ Ins. by s. 12 of the Mines Maternity Benefit (Amendment) Act, 1945 (10 of 1945)

² For Statement of Objects and Reasons, see Gazette of India, 1941, Pt. V, p. 122 and for Report of Select Committee, see *ibid*, p. 167.

respect of any one person shall not, after the 31st day of March, 1939, exceed fifty rupees per annum;

And whereas it is further provided in the said section that any such tax which was in force during the financial year ending with the 31st day of March, 1939, may continue to be lawfully levied at a rate higher than fifty rupees per annum unless provision to the contrary is made by the Federal Legislature;

And whereas it is expedient that provision shall be made whereby the total amount payable in respect of any such persons by way of such tax shall not exceed fifty rupees per annum;

It is hereby enacted as follows:—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Professions Tax Limitation Act, 1941.

(2) It extends to [all the Provinces of India].

(3) It shall come into force on the 1st day of April, 1942.

Limitation
of tax.

2. Notwithstanding the provisions of any law for the time being in force, any taxes payable in respect of any one person to a Province, or to any one municipality, district board, local board or other local authority in any Province, by way of tax on professions, trades, callings or employments, shall from and after the commencement of this Act cease to be levied to the extent to which such taxes exceed fifty rupees per annum.

Saving.

3. The provisions of section 2 shall not apply to any tax specified in the Schedule.

THE SCHEDULE.

(See section 3.)

Taxes to which section 2 does not apply.

1. The tax on professions, trades and callings, imposed through fees for annual licences, under Chapter XII of the Calcutta Municipal Act, 1923.

Ben. Act
III of 1923.

2. The tax on trades, professions and callings, imposed under clause (f) of sub-section (1) of section 123 of the Bengal Municipal Act, 1932.

Ben. Act
XV of 1932.

3. The tax on trades and callings carried on within the municipal limits and deriving special advantages from, or imposing special burdens on, municipal services, imposed under clause (ii) of sub-section (1) of section 128 of the United Provinces Municipalities Act, 1916.

U.P. Act
II of 1916.

4. The tax on persons exercising any profession or art, or carrying on any trade or calling, within the limits of the municipality, imposed under clause (b) of section (1) of section 66 of the Central Provinces Municipalities Act, 1922.

C.P. Act
II of 1922.

5. The tax on companies, imposed under section 110 of the Madras City Municipal Act, 1919.]

Madras Act
IV of 1919.

¹ Subs. by the A.O. 1948 for "the whole of British India".

² Ins. by s. 2 of the Professions Tax Limitation (Amendment) Act, 1946 (5 of 1946) (retrospectively).

THE FEDERAL COURT ACT, 1941.

Act No. XXI of 1941.¹

[28th November, 1941.]

An Act to empower the Federal Court to make rules for regulating the presentation of appeals lying to that Court.

V of 1908.

WHEREAS it is expedient to empower the Federal Court to make rules for regulating the presentation of appeals lying to that Court, and for that purpose to repeal those provisions of the Code of Civil Procedure, 1908, which now regulate that matter;

It is hereby enacted as follows:—

1. (1) This Act may be called the Federal Court Act, 1941.

Short title
and com-
mencement.

(2) It shall come into force on such ²date as the Central Government may, by notification in the official Gazette, appoint.

2. [Repeal of section IIIA and rule 17 of Order XLV of the First Schedule, Act V of 1908.]—Rep. by the Repealing and Amending Act, 1945 (VI of 1945), s. 2 and Sch. I.

3. The Federal Court may, with the approval of the Governor General * * * make rules for regulating the presentation and prosecution of appeals lying to that Court, including rules relating to the furnishing of security for costs, the proceedings, if any, to be had in High Courts in connection with such appeals, and the preparation and transmission to the Federal Court of the records in such appeals.

Power of
Federal
Court to
make rules.

¹ For Statement of Objects and Reasons, *see* Gazette of India, 1941, Pt. V; p. 136 and for Report of Select Committee, *see ibid.*, p. 165.

The Act has been applied to the Santhal Parganas and Chota Nagpur, *see* Bihar Govt. Notfn. No. 2759-J/A-55 41, dated the 16th December, 1941, and the excluded areas in Madras, with the omission of s. 2, *see* Fort St. George Gazette, Pt. I, dated the 12th May, 1942.

² The 1st September, 1942, *see* Gazette of India, 1942 Pt. I, p. 1226.

The Act came into force from 5th July 1943 in the following areas:—

Santhal Parganas Dist. and Chota Nagpur Divn. in the Province of Bihar; Jaunsar-Bawar Pargana of the Dehra Dun Dist., and the portion of the Mirzapur Dist., South of the Kainour Range in the United Provinces; the partially excluded areas in the Province of Madras; the Dist. of Sambalpur; the Dist. of Angul and the Dist. of Khondmals in the Province of Orissa, *see* Notfn. No. F. 203/41-C. & G. (Judl), dated the 30th June, 1943, Gazette of India, 1943, Pt. I, p. 701.

The Act came into force in the excluded areas in the Province of Madras with effect from 26th July 1943, *see* Gazette of India, 1943, Pt. I, p. 786.

³ The words "in his discretion" were rep. by the A. O. 1947.

⁴ For the Federal Court Rules, 1942, *see* Gazette of India, 1942, Pt. I, p. 1226 or Gen. R. & O., Supplementary Vol. V, p. 194.

THE RAILWAYS (LOCAL AUTHORITIES' TAXATION) ACT, 1941.

Act No. XXV of 1941.¹

[28th November, 1941.]

An Act to regulate the extent to which railway property shall be liable to taxation imposed by an authority within a ^{State} Province;

WHEREAS it is expedient to regulate the extent to which property vested in ~~His Majesty for the purposes of~~ the Central Government, being property of a railway, shall be liable to taxation imposed by an authority within a ~~Province~~; ^{State}

It is hereby enacted as follows:—

Short title
and extent.

1. (1) This Act may be called the Railways (Local Authorities' Taxation) Act, 1941.

Definitions.

(2) It extends to ~~all the Provinces~~ ^{whole} of India, ~~except the State of~~ ^{Jammu & Kashmir.}

2. In this Act,—

(a) "local authority" means a local authority as defined in the General Clauses Act, 1897, and includes any authority ^{X of 1897.} legally entitled to or entrusted with the control or management of any fund for the maintenance of watchmen or for the conservancy of a river;

(b) "railway administration" has the meaning assigned to the expression in clause (6) of section 3 of the Indian Rail- ^{IX of 1890} ways Act, 1890.

Liability of
railways to
taxation by
local author-
ities.

3. (1) In respect of property vested in His Majesty for the purposes of the Central Government, being property of a railway, a railway administration shall be liable to pay any tax in aid of the funds of any local authority, if the Central Government, by notification in the official Gazette, declares it to be so liable.

(2) While a notification under sub-section (1) is in force, the railway administration shall be liable to pay to the local authority either the tax mentioned in the notification or in lieu thereof such sum, if any, as a person appointed in this behalf by the Central Government may, having regard to the services rendered to the railway and all the relevant circumstances of the case, from time to time determine to be

¹ For Statement of Objects and Reasons, see Gazette of India, 1941, Pt. V, p. 130; and for Report of Select Committee, see *ibid*, p. 194.

² Subs. by the A. O. 1948 for "the whole of British India."

fair and reasonable. The person so appointed shall be a person who is or has been a Judge of a High Court or a District Judge.

IX of 1890. 4. The Central Government may, by notification in the official Gazette, revoke or vary any notification issued under clause (1) of section 135 of the Indian Railways Act, 1890; and where a notification is so revoked any liability arising out of the notification to pay any tax to any local authority shall cease, and where a notification is so varied the liability arising out of the notification shall be varied accordingly. Modification of existing liability to taxation.

5. Nothing in this Act shall be construed as debarring any railway administration administering a railway from entering into a contract with any local authority for the supply of water or light or for the scavenging of railway premises, or for any other service which the local authority may be rendering or be prepared to render within any part of the local area under its control. Savings.

THE MULTI-UNIT CO-OPERATIVE SOCIETIES ACT, 1942.

Act No. VI of 1942.¹

[2nd March, 1942.]

An Act to provide for the incorporation, regulation and winding up of co-operative societies with objects not confined to one province.

WHEREAS it is expedient to provide for the incorporation, regulation and winding up of co-operative societies with objects not confined to one province;

It is hereby enacted as follows:—

1. (1) This Act may be called the Multi-unit Co-operative Societies Act, 1942. Short title, extent and application.

(2) It extends to ^{whole} ~~all the Provinces of India~~ ^{Jammu & Kashmir} except the state of

II of 1912. (3) It applies to all co-operative societies with objects not confined to one province incorporated before the commencement of this Act under the Co-operative Societies Act, 1912, or under any Act relating to co-operative societies in force in any province and to all co-operative societies with objects not confined to one province to be incorporated after the commencement of this Act. state

¹ For Statement of Objects and Reasons, see Gazette of India, 1942, Pt. V, p. 17.

² Subs. by the A. O. 1943 for "the whole of British India".

Co-operative societies to which this Act applies registered before Commencement of this Act.

2. (1) A co-operative society to which this Act applies which has been registered in any province under the law relating to co-operative societies in force in that province shall be deemed in any other province to which its objects extend to be duly registered in that other province under the law there in force relating to co-operative societies, but shall, save as provided in sub-sections (2) and (3), be subject for all the purposes of registration, control and dissolution to the law relating to co-operative societies in force for the time being in the province in which it is actually registered.

(2) Where any such co-operative society has established before the commencement of this Act or establishes after the commencement of this Act a branch or place of business in a province other than that in which it is actually registered, it shall, within six months from the commencement of this Act or the date of establishment of the branch or place of business, as the case may be, furnish to the Registrar of Co-operative Societies of the province in which such branch or place of business is situated a copy of its registered bye-laws, and shall at any time it is required to do so by the said Registrar submit any returns and supply any information which the said Registrar might require to be submitted or supplied to him by a co-operative society actually registered in that province.

(3) The Registrar of Co-operative Societies of the province in which a branch or place of business such as is referred to in sub-section (2) is situated may exercise in respect of that branch or place of business any powers of audit and of inspection which he might exercise in respect of a co-operative society actually registered in the province.

Co-operative societies to which this Act applies registered after Commencement of this Act.

3. (1) A society which might, if its objects were confined to one province, be registered as a co-operative society in any province under the law relating to co-operative societies in force in that province, shall, notwithstanding that its objects are not confined to the province in which its principal place of business is to be situated, be deemed for the purposes of registration as a co-operative society to be situated wholly in that province, and may be registered by the Registrar of Co-operative Societies of that province in accordance with the law relating to co-operative societies for the time being in force in that province, and if so registered shall be deemed in any other province to which its objects extend to be duly registered in that other province under the law there in force relating to co-operative societies but shall, save as provided in sub-sections (2) and (3), be subject for all the purposes of registration, control and dissolution to the law relating to co-operative societies in force for the time being in the province in which it is actually registered.

(2) Where any such co-operative society establishes a branch or place of business in a province other than that in which it is actually registered, it shall within six months from the date of establishment of the branch or place of business furnish to the Registrar of Co-operative Societies of the province in which such branch or place of business is situated a copy of its registered bye-laws, and shall at any time it is required to do so by the said Registrar submit any returns and supply

any information which the said Registrar might require to be submitted or supplied to him by a co-operative society actually registered in that province.

(3) The Registrar of Co-operative Societies of the province in which a branch or place of business such as is referred to in sub-section (2) is situated may exercise in respect of that branch or place of business any powers of audit and of inspection which he might exercise in respect of a co-operative society actually registered in that province.

4. (1) The Central Government may, if it thinks fit, appoint a Central Registrar of Co-operative Societies.

Appointment and powers of Central Registrar of Co-operative Societies.

(2) The Central Registrar of Co-operative Societies, if appointed, shall exercise in respect of any co-operative society to which this Act applies, to the exclusion of Provincial Registrars, the powers and functions of the Registrar of Co-operative Societies of the province.

5A. Transitional provisions regarding certain co-operative societies affected by reorganisation of States.—(1) where by virtue of the provisions of Part II of the States Reorganisation Act, 1956, any co-operative society which, immediately before the 1st day of November, 1956, had its objects confined to one State becomes, as from that day, a multi-unit co-operative society, it shall be deemed to be a co-operative society, to which this Act applies and shall be deemed to be actually registered in the State in which the principal place of business of the co-operative society is situated.

Authority for re-organisation re-ferred under Act.

Power of Central Government to make rules.

(2) If it appears to the Central Registrar of Co-operative Societies necessary or expedient that any such society should be reconstituted or reorganised in any manner or that it should be dissolved, the Central Registrar may, with the approval of the Central Government, place before a meeting of the general body of the society held in such manner as may be prescribed by rules made under this Act, a scheme for the reconstitution, reorganisation or dissolution of the society, including proposals regarding the formation of new co-operative societies and the transfer thereto of the assets and liabilities of that society.

(3) If the scheme is sanctioned by a resolution passed by a majority of the members present at the said meeting, either without modifications or with modifications to which the Central Registrar agrees, he shall certify the scheme and upon such certification the scheme shall, notwithstanding anything to the contrary contained in any law, regulation or bye-law for the time being in force, be binding on all the societies affected by the scheme, as well as the shareholders and creditors of all such societies.

(4) If the scheme is not sanctioned under sub-section (3), the Central Registrar may refer the scheme to such Judge of the appropriate High Court as may be nominated in this behalf by the Chief Justice thereof, and the decision of that

SECTIONS.

9. Power of Board to make bye-laws.

10. Dissolution of the Board.

Duties of Customs and of Excise.

11. Duty of customs.

12. Duty of excise.

13. Payment of proceeds of duties to the Board and manner of realisation by the Board.

Registration.

14. Registration of owners of coffee estates.

15. Power of Provincial Government to make rules.

Control of Sale, Export and Re-import of Coffee.

16. Fixation of prices for sale of coffee.

17. Sale of coffee in excess of internal sale quota.

18. Sale of coffee, how made.

19. Storage or sale of coffee on or from unregistered estate.

20. Export of coffee.

21. Re-import of coffee exported from India.

22. Internal sale quota.

23. Returns to be made by registered owners.

24. Licences for sale of uncured coffee.

25. Surplus coffee and surplus pool.

26. Sales of coffee by the Board.

Curing of Coffee.

27. Coffee to be cured in licensed curing establishments.

28. Licensing of curing establishments.

29. Information to be supplied to the Board in connection with curing.

Finance.

30. Separate funds to be maintained by the Board.

31. General fund.

32. Pool fund.

33. Power to borrow.

34. Payments to registered owners.

Penalties and Procedure.

35. Failure to register.

36. Contravention of sections 16, 17, 18 and 19.

37. Unlicensed curing establishment.

37A. Contravention of section 23 (1).

38. False returns.

38A. Contravention of section 25.

38B. Powers to seize coffee withheld from inclusion in surplus pool.

39. Obstruction.

40. Cognizance of offences.

General.

41. Power of Board to determine amount of coffee sold by an estate.

42. Control by the Central Government.

43. Appeals to the Central Government.

44. Inspection of records.

45. Accounts of the Board.

46. Inspection of records of the Board and obtaining of copies.

47. Contracts.

47A. Bar of legal proceedings.

48. Power of the Central Government to make rules.

49. Repeal of Act XIV of 1935.

50. [*Repealed.*]

Act No. VII of 1942.¹

AN ACT TO PROVIDE FOR THE DEVELOPMENT UNDER THE
CONTROL OF THE UNION OF THE COFFEE INDUSTRY.

50/54

~~regulating the export of coffee from and the sale of coffee~~

~~in 25A. Provisions for the development of~~

WHEREAS it is expedient to provide for the
development under the control of the Union of the
coffee industry;

50/54

¹ For Statement of Objects and Reasons, see Gazette of India, 1942, Pt. V, p. 13.

² Subs. by the A. O. 1948 for "British India".

It is hereby enacted as follows:—

Short title,
and extent.

1. (1) This Act may be called the Coffee Market Expansion Act,
1942.

(2) It extends to ^{whole} ~~all the Provinces of India~~ except the State of

Declares
as to ex-
pendiency
Central
Govern-
ment's
trol.

2. Declaration as to expediency of Union ex-
pendient in the public interest that the Union
should take under its control the coffee industry.

L/54.

Definitions.

3. In this Act, unless there is anything repugnant in the subject
or context,—

- (a) "the Board" means the ³~~Indian~~ Coffee Board] constituted
under section 4;
(aa) 'Chairman' means the Chairman of the Board; L/54
(b) "coffee" means the commodity derived from the fruit of the
rubiaceous plant known by that name, and includes raw
coffee, cured coffee, uncured coffee, roasted coffee and pre-
pared coffee;
- (c) "Collector" means a Customs-collector as defined in clause
(c) of section 3 of the Sea Customs Act, 1878 or a Collec- VIII of 1878.
tor of Land Customs as defined in clause (c) of section 2
of the Land Customs Act, 1924, as the case may be; XIX of 1924.
- (d) "curing" means the application to raw coffee of mechanical
processes other than pulping for the purpose of preparing
it for marketing;
- (e) "curing establishment" means any place to which raw
coffee is sent by a registered owner for curing, and in-
cludes any estate which the Board may declare to be a
curing establishment for the purposes of this Act;
- ⁴(ee) "dealer" means a person carrying on the business of sel-
ling coffee, whether wholesale or by retail;]
- (f) "estate" means an area administered as one unit which con-
tains land planted with coffee plants;
- (g) "Indian Coffee Cess Committee" means the Indian Coffee
Cess Committee constituted under the Indian Coffee Cess
Act, 1935; XIV of 1935
- (h) "internal sale quota" means that portion, stated in terms
of bulk or weight, of the whole of the coffee produced by

¹ Subs. by the A. O. 1948 for "the whole of British India".

² Sub-section (3) was rep. by s. 2 of the Coffee Market Expansion (Amendment) Act, 1947 (4 of 1947).

³ Subs. for "Indian Coffee Market Expansion Board" by s. 2 of the Coffee Market Expansion (Amendment) Act, 1943 (7 of 1943).

⁴ Ins. by s. 2 of the Coffee Market Expansion (Amendment) Act, 1944 (2 of 1944).

(2) The Board shall consist of --

(i) a chairman to be appointed by the Central Government;

(ii) OMITTED A.O.(3)/56.

(iii) one person to represent the Government of Mysore, to be nominated by that Government;

(iv) one person to represent the Government of Madras to be nominated by that Government;

(v) one person to represent the Government of Kerala, to be nominated by that Government;

(vi) two persons to represent the coffee growing industry in Kerala;

(vii) seven persons to represent the coffee growing industry in Mysore;

(viii) three persons to represent the coffee growing industry in Madras;

(xi) three persons to represent coffee trade interests, to be nominated by the Central Government; tion

(x) one person to represent curing establishments, to be nominated by the Central Government;

(xi) four persons to represent labour, to be nominated by the Central Government;

(xii) three persons to represent the interests of consumers, to be nominated by the Central Government;

(xiii) three persons to represent such other interests as in the opinion of the Central Government ought to be represented, to be nominated by the Central Government;

(xiv) three members of Parliament of whom two shall be elected by the House of the People and one by the Council of States;

(2A) The persons to represent the interests referred to in clauses (vi), (vii) and (viii) of sub-section (2) shall be elected or nominated as may be prescribed;

(2B) Any Officer of the Central Government when deputed by that Government in this behalf shall have the right to attend meetings of the Board and take part in the proceedings thereof but shall not be entitled to vote.

- (b) four persons representing the coffee trade interests, nominated by the Central Government;
- (c) fourteen persons representing the coffee growing industry, namely:—
- (i) three persons nominated by the Government of Mysore;
 - (ii) three persons nominated by the United Planters' Association of Southern India;
 - (iii) one person nominated by the Coorg Planters' Association;
 - (iv) one person nominated by the Coorg Indian Planters' Association;
 - (v) one person nominated by the Mysore Planters' Association;
 - (vi) one person nominated by the Mysore Indian Planters' Association;
 - (vii) one person nominated by the Nilgiri Cum Nilgiri-Wynaad Planters' Association;
 - (viii) one person nominated by the Malabar-Wynaad Coffee Growers' Association;
 - (ix) one person nominated by the Shevaroy Planters' Association;
 - (x) one person nominated by the Palni-Bodi-Sirumalai Coffee Growers' Association;
- (d) three persons representing labour, one each to be nominated in consultation with labour organisations by the Governments of Madras and Mysore and one to be nominated in consultation with labour organisations by the Chief Commissioner of Coorg.]

[(3) Where a member of the Board dies, resigns or is removed, or ceases to reside in India, or becomes incapable of acting, the Central Government may, on the recommendation of the authority or body which was entitled to make the first nomination under sub-section (2), or where such recommendation is not made within a reasonable time, then on its own initiative, nominate a person to fill the vacancy.]

(5) It is hereby declared that the office of members of the Board shall not disqualify its holder for being chosen as, or for being, a member of either House of Parliament.

Incorporation of the Board.

L/54

power to acquire and hold property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

¹ Ins. by s. 3 of the Coffee Market Expansion (Amendment) Act, 1943 (7 of 1943).

² Sub-section (2) was re-numbered (4), *ibid.*

³ Subs. for "Indian Coffee Market Expansion Board", *ibid.*

6-A. Consultation with the Board.- Before taking any action touching the affairs of the Board under this Act, the Central Government shall ordinarily consult the Board:

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operty in
e Board.

Provided that no action taken by the Central Government shall be invalid or called in question merely on the ground that the action was taken without such consultation.

Chairman,
ommittees,
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1940. ed under the Coffee Market Expansion Ordinance, 1940, shall be the first chairman of the Board.

(2) The Board may appoint such committees for such purposes and may employ such staff as it thinks necessary for the efficient discharge of its functions under this Act.

(3) The Board may authorise agents to act on its behalf.

8. Salary and allowances of Chairman.- The Chairman shall be entitled to such salary and allowances and such conditions of service in respect of leave, pension, provident fund and other matters as may, from time to time, be fixed by the Central Government.

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8A. Vice-chairman.- The Board shall elect from amongst its members a Vice-chairman who shall exercise such of the powers and perform such of the duties of the Chairman as may be prescribed or as may be delegated to him by the Chairman.

9. Chief Coffee Marketing Officer, Secretary and other staff.- (1) The Central Government shall appoint an officer to be called the Chief Coffee Marketing Officer and a Secretary to the Board and may appoint a Deputy Secretary to the Board and such ~~number~~ number of Marketing Officers as may be necessary, to exercise such powers and to perform such duties under the direction of the Board as may be prescribed.

(2) The officers appointed under this section shall be entitled to such salaries and allowances and such conditions of service in respect of leave, pension provident fund and other matters as may, from time to time, be fixed by the Central Government.

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² Subs. for "Deputy Controller of Coffee", *ibid.*

³ For bye-laws made under Ordinance XIII of 1940, see Gazette of India, Extraordinary, 1940, p. 784.

- (b) the powers exercisable and the duties to be discharged by the chairman of the Board and the members of the staff of the Board;
- (c) the travelling or other allowances which may be drawn by members of the Board;
- (d) the appointment, promotion and dismissal of members of the staff of the Board, the creation and abolition of such appointments, and the terms of service of members of the staff of the Board;
- (e) any other matter in respect of which bye-laws may be made under this Act or the rules made thereunder.

Dissolution of
the Board.

10. When the Board is dissolved by reason of this Act having ceased to be in force, the unexpended balance of all money received by the Board under the Coffee Market Expansion Ordinance, 1940, or under this Act except money in the pool fund shall be disposed of in such manner as the Central Government may direct. The Central Government shall disburse the money in the pool fund in the same manner as the Board would have done had it continued to exist. XIII of 1

Duties of Customs and of Excise.

not exceeding 1

Duty of
customs.

11. A duty of customs shall be levied on all coffee produced in India and exported from ^{the Provinces} ~~the Provinces~~ at the rate of one rupee per hundredweight or at such lower rate as the Central Government may, ^{as may be held by} ~~on the recommendation of the Board~~ by ^{such} ~~notification~~ in the official Gazette provide.

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Duty of
excise.

12. A duty of excise shall be levied at such rate not exceeding one rupee per hundredweight as may be fixed by the Central Government on the recommendation of the Board by notification in the official Gazette on all coffee, except coffee sold and delivered before the estate became subject to the provisions of sub-section (1) of section 14 which a registered estate is permitted by the internal sale quota allotted to it to sell in the Indian market. whether such coffee is sold

Payment of
Proceeds of
duties to the
Board and
manner of
realisation
by the
Board.

(1) The proceeds of the duty of customs and of the duty of excise and of any fees levied under this Act (all of which shall form part of the Consolidated Fund of India), reduced by the cost of collection as determined by the Central Government, shall, if Parliament by appropriation made by law in this behalf so provides, be paid to the Board for being utilized for the purposes of this Act.

L/54.

¹ Subs. by the A. O. 1943 for "British India".

² Duty fixed under Ordinance XIII of 1940 at one rupee per hundred weight, see Gazette of India, 1941, Pt. I, p. 94.

(a) the refund of the duty of customs where coffee is exported by land and subsequently imported into India, and

(b) the export by land, without payment of the duty of customs, of coffee which is subsequently to be imported into India.

(4) The duty of excise on coffee shall be payable by the registered owner of the estate producing the coffee and shall be realised by the Board by the deduction of the amount of the duty payable by such owner from any sum due to him on account of sales from the surplus pool. It shall be a first charge on such sum, and shall, if not capable of realisation by deduction as aforesaid, be paid to the Board by the registered owner within one month of demand by the Board or thereafter be recoverable from him as an arrear of land-revenue.

(5) The Board shall have power to adjudge by bulk the number of hundredweights contained in any quantity of uncured coffee.

(6) No action of the Board under this section shall be called in question by any Court.

Registration.

14. (1) Every person owning land planted with coffee plants aggregating not less than ten acres, whether such land is comprised in one estate or in more than one estate and whether it is situated wholly or only partly in ^{India} ~~the Provinces~~ shall, unless it is already registered as required by this sub-section, before the expiration of one month from the date on which he first becomes subject to the provisions of this sub-section, apply to the registering officer appointed in this behalf by the ^{State} ~~Provincial~~ Government to be registered as an owner and in respect of each estate owned by him. Registration of owners of coffee estates.

(2) The Central Government may, by ²notification in the official Gazette, declare that the provisions of sub-section (1) shall apply to persons owning land planted with coffee plants aggregating less than ten acres.

(3) A registration once made shall continue in force until it is cancelled by the registering officer.

(4) If any question arises whether an owner of an estate is or is not required to be registered under this section, the question shall be decided by the ^{State} ~~Chief Coffee Marketing Officer~~ subject to revision by the Central Government. Chairman

15. (1) The ^{State} ~~Provincial~~ Government may, by notification in the official Gazette, make ⁴rules to carry into effect the provisions of section 14. Power of Provincial Government to make rules.

¹ Subs. by the A.O. 1948 for "British India".

² For such notification, see Gazette of India, 1943, Pt. I, p. 453.

³ Subs. for "Controller of Coffee" by s. 5 of the Coffee Market Expansion (Amendment) Act, 1947 (4 of 1947).

⁴ For the Coorg Coffee Estate-owners Registration Rules, 1940, made under Ordinance XIII of 1940, see Gazette of India, 1940, Pt. I, p. 1754.

(Registration. Control of Sale, Export and Re-import of Coffee.)

(2) Without prejudice to the generality of the foregoing power, such rules may prescribe the form of the application for registration and for cancellation of registration, the fee payable on such applications, the particulars to be included in such applications, the procedure to be followed in granting and cancelling registration, the registers to be kept by registering officers, and the supply by registering officers of information to the Board.

Control of Sale, Export and Re-import of coffee.

Fixation of
prices for
sale of coffee.

¹[16. (7) The Central Government may, ~~after consultation with the Board~~, by notification in the official Gazette, fix the price or prices at which coffee may be sold wholesale or retail in the Indian market.

(2) No registered owner or licensed curer or dealer shall sell coffee wholesale or retail in the Indian market at a price or prices higher than the price or prices fixed under this section.]

Sale of coffee
in excess
of internal
sale quota.

17. No registered owner shall, before the estate became subject to the provisions of sub-section (1) of section 14, sell or contract to sell in the Indian market coffee from any registered estate if by such sale the internal sale quota allotted to that estate is exceeded, ²[nor shall a registered owner sell or contract to sell in the Indian market any coffee produced on his estate in any year for which no internal sale quota is allotted to the estate]:

Provided that nothing in this section shall apply to coffee sold from a registered estate in excess of the internal sale quota if such sale was in pursuance of a contract of sale entered into before the estate became subject to the provisions of sub-section (1) of section 14 and if after the estate became so subject no coffee has been sold from that estate in the Indian market except in pursuance of a contract of sale entered into before the estate became subject to the provisions of sub-section (1) of section 14.

Sale of
coffee, how
made.

18. No registered owner shall sell coffee unless either—

- (a) it has been cured at or is delivered to the buyer through a curing establishment licensed under section 28, or
- (b) it is sold under and in accordance with the provisions of a licence procured from the Board under section 24.

Storage or
sale of coffee
on or from
unregistered
estate.

19. No owner of an estate not registered under this Act shall sell from or store on his estate or cause or permit to be sold from or stored on his estate any coffee not grown on the estate ³[and no owner of a registered estate shall sell from or store on his estate or cause or permit to be sold from or stored on his estate any coffee grown on any estate not registered under this Act].

¹ Subs. by s. 5 of the Coffee Market Expansion (Amendment) Act, 1943 (7 of 1943), for the original section.

² Ins. by s. 6, *ibid.*

³ Ins. by s. 7, *ibid.*

20. No coffee shall be exported from ^{India.} ~~the Provinces~~ otherwise than by the Board or under an authorisation granted by the Board in the prescribed manner and in the prescribed cases, and the provisions of 378. the Sea Customs Act, 1878, shall have effect as if the provision made by this section had been made by notification issued under section 19

Export of
coffee.

Provided that nothing herein contained shall apply to coffee --

(i) shipped as stores on board any vessel or aircraft in such quantity as the Collector considers reasonable, having regard to the number of the crew and passengers and the length of the voyage or journey, as the case may be, on which the vessel or aircraft is about to proceed, or

(ii) carried as personal luggage of a passenger, not exceeding two pounds avoirdupois; or

port
fee
paid
India.

(iii) exported by post or by air in packages containing not more than ten pounds avoirdupois; or

(iv) exported by sea bona fide samples in packages containing not more than one pound avoirdupois:

al sale

Provided further that the Central Government may, by order in writing, specify the quantity of coffee which shall be permitted for export during any year and where any such order is made, no coffee shall be exported from India in excess of the said quantity.

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23. (1) A registered owner shall furnish to the Board at the prescribed times and in the prescribed manner such returns as may be prescribed.

Returns to
be made by
registered
owners.

(2) If any registered owner fails to furnish the returns required under sub-section (1) in respect of any estate, the Board may ⁴[without prejudice to any penalty to which the said owner is liable under section 37-A], refuse to allot an internal sale quota to that estate, or, where an internal sale quota has already been allotted, may cancel it.

¹ Subs. by the A. O. 1948 for "British India".

² For exemptions in the case of French Establishments in India and any State other than Cutch, see Notification No. 334 (10)-Tr. (I.E.R.) /40, dated the 4th February 1941, Gazette of India, 1941, Extraordinary, p. 84.

³ Ins. by s. 8 of the Coffee Market Expansion (Amendment) Act, 1943 (7 of 1943).

⁴ Ins. by s. 9, *ibid*.

(3) The Board may authorise an officer to visit any estate at any time to verify the accuracy of any return made under this section or to ascertain the productive capacity of the estate.

Licences for
sale of un-
cured coffee.

24. The registered owner of any estate may, subject to the prescribed conditions and so long as the internal sale quota allotted to that estate will not be exceeded by the proposed sale, obtain from the Board a licence for the sale from that estate of uncured coffee.

Surp
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Provided that where no internal sale quotas have been allotted to estates, the Chairman may allow the owner of any estate to retain with himself for purposes of consumption by his family and for purposes of seed, such quantity of coffee as the Chairman may think reasonable:

Provided further that where the Central Government is satisfied that it is not practicable for any class of owners producing coffee in any specified area to comply with the provisions of this sub-section on account of the small quantity of coffee produced by them or on account of their estates being situated in a remote locality, the Central Government may, by notification in the Official Gazette, exempt such class of owners from the provisions of this sub-section.

L/54.

Marketing Officers, [from time to time] prepare a differential scale for the valuation of coffee, and shall in accordance with that scale classify the coffee in each consignment delivered for inclusion in the surplus pool according to its kind and quality, and shall make an assessment of its value based on its quantity, kind and quality.

(5) The Board may, with the consent of a registered owner, * * * treat as having been delivered for inclusion in the surplus pool any coffee from such estate which the registered owner may agree to have so treated.

(6) When coffee has been delivered or is treated as having been delivered for inclusion in the surplus pool, the registered owner whose coffee has been so delivered or is treated as having been so delivered shall retain no rights in respect of such coffee except his right to receive the payments referred to in section 34.

¹ Ins. by s. 10 of the Coffee Market Expansion (Amendment) Act, 1943 (7 of 1943).

² Subs. for "Controller of Coffee" by s. 5 of the Coffee Market Expansion (Amendment) Act, 1947 (4 of 1947).

³ The words "before an internal sale quota has been allotted to an estate" were rep. by s. 10 of Act 7 of 1943.

26. (1) The Board shall take all practical measures to market the coffee included in the surplus pool, and all sales thereof shall be conducted by or through the Board. Sales of coffee by the Board.

(2) The Board may purchase for inclusion in the surplus pool coffee not delivered for inclusion in it.

Curing of Coffee.

27. No registered owner shall cause or allow coffee to be cured elsewhere than in a licensed curing establishment, whether the curing establishment is maintained by himself or by another person. Coffee to be cured in licensed curing establishments.

28. Every establishment for curing coffee shall obtain from the Board a licence to operate as such. Licensing of curing establishments.

29. (1) A registered owner when sending coffee to a curing establishment shall report to the Board, separately for each estate from which coffee is sent, the amount of coffee sent; and the curing establishment shall, in accordance with such instructions as may be issued by the Board and having regard to the internal sale quota of the estate, ¹[where one has been allotted], apportion each such consignment into two parts, one part consisting of coffee intended for internal sale and ²the other part intended to be delivered for inclusion in the surplus Information to be supplied to the Board in connection with curing.

31. General fund.- (1) To the general fund shall be credited--

(a) all amounts paid to the Board by the Central Government under sub-section (1) of section 13; and

(b) any sums transferred to the general fund ~~shall be credited~~ under the proviso to sub-sec. (2) of section 32.

(2) The general fund shall be applied--

(a) to meet the expenses of the Board;

(b) to meet the cost of such measures as the Board may consider advisable to undertake for promotion agricultural and technological research in the interest of the coffee industry in India;

(c) for making such grants to coffee estates or for meeting the cost of such other assistance to coffee estates as the Board may think necessary for the development of such estates; be

(d) to meet the cost of such measures as the Board considers advisable to undertake for promoting the sale and increasing the consumption in India; and elsewhere of coffee produced in India; and ed

(e) to meet the expenses for securing better working conditions and the provision and improvement of amenities and incentives for workers."

to the pool fund [and any sums transferred to the general fund under the proviso to sub-section (2) of section 32.]

(2) The general fund shall be applied to meet the expenses of the Board, the cost of such measures as it may consider advisable to undertake for promoting the sale and increasing the consumption in India and elsewhere of coffee produced in India, or for promoting agricultural and technological research in the interest of the coffee industry in India.

Pool fund.

32. (1) To the pool fund shall be credited all sums realised by sales by the Board of coffee from the surplus pool.

(2) Subject to the provisions of sub-section (4) of section 13, the pool fund shall be applied only to—

- (a) the making to registered owners of estates of payments proportionate to the value of the coffee delivered by them for inclusion in the surplus pool;
- (b) the costs of storing, curing and marketing coffee deposited in and of administering the surplus pool;
- (c) the purchase of coffee not delivered for inclusion in the surplus pool:

²[Provided that where, after the requirements of the clauses of this sub-section have been met, there remains any excess in the pool fund, the Board may with the—

32A. Power of the Board to make donation to the Gandhi National Memorial Fund; Notwithstanding anything contained in section 32, the Board may apply any part of the pool fund to the making of a donation, to the Fund known as the Gandhi National Memorial Fund.

Power to borrow.

XXXIV/49.

money from the pool fund.

Payments to registered owners.

34. (1) The Board shall at such times as it thinks fit make to registered owners who have delivered coffee for inclusion in the surplus pool such payments out of the pool fund as it may think proper.

(2) The sum of all payments made under sub-section (1) to any one registered owner shall bear to the sum of the payments made to all registered owners the same proportion as the value of the coffee delivered by him out of the year's crop to the surplus pool bears to the value of all coffee delivered to the surplus pool out of that year's crop:

³[Provided that in calculating the sum of all payments made under sub-section (1) and the value of the coffee delivered to the surplus pool

¹ Ins. by s. 2 of the Coffee Market Expansion (Second Amendment) Act, 1944 (16 of 1944).

² Ins. by s. 3, *ibid.*

³ Ins. by s. 12 of the Coffee Market Expansion (Amendment) Act, 1943 (7 of 1943)

out of the year's crop, respectively, any payment accepted by a registered owner as final payment in immediate settlement for coffee delivered by him for inclusion in the surplus pool and the value of any such coffee shall be excluded].

Penalties and Procedure.

35. Any owner of a coffee estate who fails to apply for registration in accordance with section 14 shall be punishable with fine which may extend to one thousand rupees and to a further fine which may extend to five hundred rupees for each month after the first during which such failure continues.

Failure to register.

36. (1) Any registered owner who contravenes the provisions of sub-section (2) of section 16, or section 17 or section 18, any licensed curer ¹[or dealer] who contravenes the provisions of sub-section (2) of section 16, and any person who contravenes the provisions of section 19 shall be punishable with fine which may extend to one thousand rupees.

Contravention of sections 16, 17, 18 and 19.

(2) When a registered owner is convicted under this section, the Board may thereafter deduct from any payment to be made under section 34 to such registered owner a sum equal to the value as estimated by the Board of any coffee unlawfully sold by him.

37. If any curing establishment operates as such without a licence, the owner shall be punishable with fine which may extend to five hundred rupees.

Unlicensed curing establishment.

²[37A. Any registered owner who fails to furnish the return required by sub-section (1) of section 23 as required by that sub-section shall be punishable with fine which may extend to one thousand rupees].

Contravention of section 23 (1).

38. Any person who makes in any return to be furnished under section 23 or in any report to be made under section 29 any statement which is false and which he knows to be false or does not believe to be true shall be punishable with fine which may extend to one thousand rupees.

False returns.

³[38A. Any registered owner or licensed curer who fails to deliver any coffee to the Board as required by or under sub-sections (1) and (2) of section 25 shall be punishable with fine which may extend to one thousand rupees, and the Court by which such person is convicted may order the confiscation and delivery to the Board of any coffee in respect of which the offence was committed.

Contravention of section 25.

38B. If the Board is satisfied that any coffee which is required under the provisions of section 25 to be delivered for inclusion in the surplus pool is being or is likely to be disposed of otherwise than by such delivery, the Board may order the seizure of such coffee, and may

Powers to seize coffee withheld from inclusion in surplus pool.

¹ Ins. by s. 3 of the Coffee Market Expansion Amendment) Act, 1944 (2 of 1944).

² Ins. by s. 13 of the Coffee Market Expansion (Amendment) Act, 1943 (7 of 1943).

³ Ins. by s. 14, *ibid.*

authorise an officer of the Board to effect seizure thereof for delivery for inclusion in the surplus pool, and such authorisation shall be sufficient

Obs

39A. Offences by companies.- (1) If the person committing any offence under this Act is a company, every person who, at the time of the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Cogn
of of

Provided that nothing contained in this sub-section shall render any such person liable to punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Pow.
Boar
deter
amoi
coffee
by a

Explanation.- For the purposes of this section,

(a) 'company' means any body corporate and includes a firm or other association of individuals; and

(b) 'director' in relation to a firm means a partner in the firm.

Cont
the
Government.

Central Government which may cancel, suspend or modify as it thinks fit any action taken by the Board. I/54

(2) The records of the Board shall be open to inspection at all reasonable time by any officer authorised in this behalf by the Central Government.

Appeals to
the Central
Government.

43. (1) Any person aggrieved by an order of the Board refusing a licence to or cancelling the licence of a curing establishment may, within sixty days of the making of the order, appeal to the Central Government.

¹ Ins. by s. 4 of the Coffee Market Expansion (Amendment) Act, 1944 (2 of 1944).

² Ins. by s. 15 of the Coffee Market Expansion (Amendment) Act, 1943 (7 of 1943).

³ For such notification see Gazette of India, 1943, Pt. I, p. 1025.

(2) Any person making an appeal under this section shall pay a fee of five rupees which shall be credited to Central Revenues.

Any person authorised in this behalf by the Central Government or by the Board or any member of the Board so authorized by the Chairman in writing or any officer of the Board, may enter at all reasonable times.

inspector relating to the production, storage or sale of coffee

45. (1) The Board shall keep accounts in such manner as may be prescribed of all money received and expended by it. Accounts of the Board.

(2) The accounts shall be kept separately for the general fund and the pool fund.

(3) The Board shall cause the accounts to be audited annually by auditors appointed by the Central Government, and the auditors shall have power to disallow any item of expenditure which has, in their opinion, been incurred otherwise than in accordance with this Act.

(4) The Central Government may on the application of the Board allow any item of expenditure disallowed by the auditors under sub-section (3).

46. Any registered owner ^{3****} may, subject to the prescribed conditions, inspect the records maintained by the Board and may on payment of the prescribed fee obtain copies of any proceedings or orders of the Board. Inspection of records of the Board and obtaining of copies

47. All contracts for the sale of coffee in so far as they are at variance with the provisions of this Act shall be void. Contracts.

Provided that nothing contained in this section shall apply to contracts to which under section 47 of the Coffee Market Expansion Ordinance, 1940, that Ordinance did not apply.

[47A. No suit, prosecution or other legal proceeding shall lie against the Board or any officer of the Board for or in respect of anything in good faith done or intended to be done under this Act.] Bar of legal proceedings.

48. (1) The Central Government may, by notification in the official Gazette, make ⁵rules to carry out the purposes of this Act. Power of the Central Government to make rules.

~~22. 7.~~ ^{new sub-section (2) see Div. (P.T.O.)}
(2) Without prejudice to the generality of the foregoing power, rules may be made providing for all or any of the following matters, namely:—

¹ Ins. by s. 16 of the Coffee Market Expansion (Amendment) Act, 1943 (7 of 1943).

² The words "by the estate" were rep., *ibid.*

³ The words "to whom an internal sale quota is allotted" were rep. by s. 17, *ibid.*

⁴ Ins. by s. 18, *ibid.*

⁵ For Coffee Market Expansion Rules, 1940 made under ordinance XIII of 1940, see Gazette of India, 1940, Extraordinary, p. 775, or Gen. R. & O., Supplementary Vol. VIII p. 217.

(2) Without prejudice to the generality of the foregoing power, rules may be made providing for all or any of the following matters:--

(i) the principles regulating the nomination or election of members of the Board;

(ii) the term of office of members of the Board, the circumstances in which, and the authority by which, members may be removed and filling of casual vacancies in the Board;

(iii) the procedure to be followed at meetings of the Board and at committees thereof for the conduct of business and the number of members which shall form a quorum at a meeting;

(iv) the maintenance by the Board of records of business transacted by the Board and the submission of copies thereof to the Central Government;

(v) the holding of a minimum number of meetings of the Board every year;

(vi) the powers of the Board, its Chairman and Committee thereof with respect to the incurring of expenditure;

(vii) the conditions subject to which the Board may incur expenditure outside India;

(viii) the preparation of budget estimate of receipts and expenditure of the Board and the authority by which the estimates are to be sanctioned

(ix) the maintenance of the accounts of income and ~~xxx~~ expenditure of the Board and the audit of such accounts;

(x) the deposit of the funds of the Board in banks and the investment of such funds;

(xi) the re-appropriation of the estimated savings from any budget head to any other budget head;

(xii) the conditions subject to which the Board may borrow funds;

(xiii) the conditions subject to which and the manner in which contracts may be entered into by or on behalf of the Board;

(xiv) the delegation to the committee or Chairman or Vice-Chairman or members or officers of the Board of any of the powers and duties of the Board under this Act;

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THE INDIAN FINANCE ACT, 1942.

Act No. XII of 1942.¹

[26th March, 1942.]

II of 1917.

XII of 1922,
XVIII of
1930.XXXII of
1934.

VI of 1898.

An Act to fix the duty on salt manufactured in or imported by land into, certain parts of ²[the Provinces] to vary the rate of the excise duty on motor spirit leviable under the Motor Spirit (Duties) Act, 1917, to vary the rate of the excise duty on kerosene leviable under section 5 of the Indian Finance Act, 1922, to vary the rate of the excise duty on silver leviable under the Silver (Excise Duty) Act, 1930, to levy customs duties in addition to the duties of customs leviable under the Indian Tariff Act, 1934, to fix maximum rates of postage under the Indian Post Office Act, 1898, to fix rates of income-tax and super-tax and to continue the charge and levy of excess profits tax and fix the rate at which excess profits tax shall be charged.

II of 1917.
XII of 1922.
XVIII of
1930.XXXII of
1934.

VI of 1898.

WHEREAS it is expedient to fix the duty on salt manufactured in, or imported by land into, certain parts of ²[the Provinces], to vary the rate of the excise duty on motor spirit leviable under the Motor Spirit (Duties) Act, 1917, to vary the rate of the excise duty on kerosene leviable under section 5 of the Indian Finance Act, 1922, to vary the rate of the excise duty on silver leviable under the Silver (Excise Duty) Act, 1930, to levy customs duties in addition to the duties of customs leviable under the Indian Tariff Act, 1934, to fix maximum rates of postage under the Indian Post Office Act, 1898, to fix rates of income-tax and super-tax and to continue the charge and levy of excess profits tax and fix the rate at which excess profits tax shall be charged;

(2) It extends to the whole of India except the territory which immediately before the 1st November 1956 were comprised in Part B States.

Short title
and extent.

XII of 1892.

2. The provisions of section 7 of the Indian Salt Act, 1892, shall, in so far as they enable the Central Government to impose by rule made under that section a duty on salt manufactured in, or imported into, any part of ²[the Provinces], be construed as if, for the year beginning

Fixation of
salt duty.

~~the year to which this Act extends~~

¹ For Statement of Objects and Reasons, see Gazette of India, 1942, Pt. V, p. 53.

The Act has been applied to certain partially excluded areas in the Province of Orissa, to a certain extent, see Orissa Govt. Notfn No. 2383-F., dated the 16th May, 1942.

² Subs. by the A. O. 1948 for "British India".

³ Subs. by the A. O. 1948 for "the whole of British India".

ning on the 1st day of April, 1942, they imposed such duty at the rate of one rupee and four annas per maund of eighty-two and two-sevenths pounds avoirdupois of salt manufactured in, or imported by land into, any such part, and such duty shall, for all the purposes of the said Act, be deemed to have been imposed by rule made under that section.

Excise duty
on motor
spirit.

*3. In sub-section (1) of section 3 of the Motor Spirit (Duties) Act, 1917, for the words "twelve annas" the words "fifteen annas" shall be substituted. II of 1917.

Excise duty
on kerosene.

*4. In the proviso to section 5 of the Indian Finance Act, 1922, for the words "of two annas and three pies" the words "at which customs duty is for the time being leviable under the Indian Tariff Act, 1934, read with any other enactment for the time being in force" shall be substituted. XXXII of 1934.

Excise duty
on silver.

*5. In sub-section (1) of section 3 of the Silver (Excise Duty) Act, 1930, for the words "three annas" the words "three annas and seven and one-fifth pies" shall be substituted. XVIII of 1930.

Additional
customs
duties.

*6. Where any goods chargeable with a duty of customs under the First Schedule to the Indian Tariff Act, 1934, or under the said Schedule read with any notification of the Central Government for the time being in force, are assessed to duty, there shall up to the 31st day of March, 1943¹, be levied and collected as an addition to and in the same manner as the total amount so chargeable, a sum equal to one-fifth of such amount. XXXII of 1934.

Provided that such addition of duty shall not be levied and collected on—

- (a) salt comprised in Item No. 25 (1) of the said Schedule;
- (b) motor spirit comprised in Item No. 27 (6) of the said Schedule;
- (c) raw cotton comprised in Item No. 46 (3) of the said Schedule so long as the additional duty of customs imposed by the Cotton Fund Ordinance, 1942, continues to be leviable; Ord. VIII of 1942.
- (d) machinery comprised in Items Nos. 72, 72 (1), 72 (2) and 72 (3) of the said Schedule;
- (e) the following, when the Customs-collector is satisfied that they are the produce or manufacture of Burma, namely:—
 - (i) potatoes and onions comprised in Item No. 7 of the said Schedule,
 - (ii) coffee comprised in Item No. 9 of the said Schedule.

¹This section came into effect on 1st March, 1942, by virtue of a declaration inserted in the Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931).

¹ Extended up to 31st March, 1949, *sec. 4* of the Indian Finance Act, 1948 (20 of 1948).

- (iii) spices comprised in Item No. 9 (2) of the said Schedule,
- (iv) betelnuts comprised in Item No. 9 (5) of the said Schedule,
- (v) cutch and gambier comprised in Item No. 13 (2) of the said Schedule,
- (vi) sugar excluding confectionery comprised in Item No. 17 of the said Schedule,
- (vii) cigars comprised in Item No. 24 (7) of the said Schedule,
- (viii) matches comprised in Item No. 34 (4) (a) of the said Schedule.

7. For the year beginning on the 1st day of April, 1942, the Schedule contained in Schedule I to this Act shall be inserted in the Indian Post Office Act, 1898, as the First Schedule to that Act. Inland post-
age rates.

8. (1) Subject to the provisions of sub-sections (2) and (3),—

Income-tax
and super-
tax.

(a) income-tax for the year beginning on the 1st day of April, 1942, shall be charged at the rates specified in Part I of Schedule II increased in the cases to which sub-paragraph (b) of paragraph A and paragraph B of that Part apply by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of income-tax, and

(b) rates of super-tax for the year beginning on the 1st day of April, 1942, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be those specified in Part II of Schedule II increased in the cases to which paragraphs A, B and C of that Part apply by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of super-tax.

XI of 1922.

(2) In making any assessment for the year ending on the 31st day of March, 1943,—

(a) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" or under the head "Interest on Securities" or any income from dividends in respect of which he is deemed under section 49B of the Indian Income-tax Act, 1922, to have paid income-tax imposed in ~~the Provinces~~ the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1941, on his total income the same proportion as the amount of such inclusions bears to his total income;

XI of 1922.

VII of 1941.

(b) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" on which super-tax has been or might have been deducted under the provisions of sub-section (2) of section 18 of the Indian Income-tax Act, 1922, the super-tax payable by the assessee on that portion of his total income which consists of such inclusions shall be an amount bearing to the total amount of super-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1941, on his total income the same proportions as the amount of such inclusions bears to his total income. XI of 1922.
VII of 1941.

(3) In cases to which section 17 of the Indian Income-tax Act, 1922, applies, the tax chargeable shall be determined as provided in that section but with reference to the rates imposed by sub-section (1) of this section and in accordance with the provisions of sub-section (2) of this section where applicable. XI of 1922.

(4) For the purposes of this section and of the rates of tax imposed thereby, the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922. XI of 1922.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (2) no tax shall be payable in cases to which sub-paragraph (a) of paragraph A of Part I of Schedule II applies where the assessee deposits with the Central Government in such manner and in accordance with such conditions as the Central Government may by rule prescribe for the purposes of this sub-section an amount representing not less than one rupee for every complete unit of twenty-five rupees by which his total income exceeds seven hundred and fifty rupees:

Provided that where the total income includes any income chargeable under the head "Salaries" or under the head "Interest on Securities" or any income from dividends in respect of which he is deemed under section 49B of the Indian Income-tax Act, 1922 to have paid income-tax imposed in ^{the States} ~~the Provinces~~, the amount to be deposited by the assessee in order to obtain the exemption conferred by this sub-section shall be an amount bearing to the minimum required to be deposited under the foregoing provisions of this sub-section the same proportion as the amount of his total income diminished by the amount of such inclusions bears to the amount of his total income. XI of 1922.

(6) A deposit made in accordance with the provisions of sub-section (5) shall not in any way be capable of being charged and shall not be liable to attachment under any decree or order of any Civil, Revenue or Criminal Court in respect of any debt or liability incurred by the depositor and neither the Official Assignee nor any receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to or have any claim on any such deposit. V of 1920.

(7) Where the total income of an assessee referred to in sub-paragraph (b) of paragraph A of Part I of Schedule II does not exceed six thousand rupees, an amount representing one rupee for every complete unit of two hundred rupees of his total income as reduced by the deductions, if any, allowed under the second proviso to sub-section (1) of section 7, section 15 and sub-section (1) of section 58F of the Indian Income-tax Act, 1922, shall be funded for the assessee's benefit and shall be paid to him on such date, not more than twelve months after the termination of the present hostilities, as the Central Government may fix:

Provided that nothing in this sub-section shall apply to any part of total income to which clause (a) of sub-section (2) applies.

Explanation.—In computing the amount to be funded under this sub-section, if there is an incomplete unit amounting to one hundred rupees or more it shall be reckoned as a complete unit of two hundred rupees.

9. (1) In sub-clause (a) of clause (6) of section 2 of the Excess Profits Tax Act, 1940, for the words and figures "31st day of March, 1942" the words and figures "31st day of March, 1943" shall be substituted.

Continuance
of and rate
of Excess
Profits Tax.

(2) The excess profits tax imposed by section 4 of the Excess Profits Tax Act, 1940, shall, in respect of any chargeable accounting period beginning after the 31st day of March, 1942, be an amount equal to sixty-six and two-thirds per cent. of the amount by which the profits of the business during that chargeable accounting period exceed the standard profits.

10. (1) If before the 1st day of July, 1942, or within thirty days of the date on which any excess profits tax, charged under the provisions of the Excess Profits Tax Act, 1940, at the rate of sixty-six and two-thirds per cent. becomes payable, whichever of these dates is later, a further sum not exceeding one-fifth of the amount of the said excess profits tax is deposited with the Central Government, the Central Government shall repay, at such date and subject to such conditions as it may hereafter determine, so much of the said excess profits tax as shall be equal to one-tenth of the amount thereof or to one-half of such further sum deposited, whichever is the less:

Funding of
one-tenth of
Excess Pro-
fits Tax.

Provided that, if the said excess profits tax is thereafter reduced, whether by relief given in respect of a deficiency of profits, or by relief given in respect of double excess profits taxation or otherwise, and whether by refund or otherwise, the portion of the tax to be repaid under this section shall be correspondingly reduced:

Provided further that if the said excess profits tax is so reduced, the maximum sum that may be deposited with the Central Government under this section shall also be correspondingly reduced:

¹ 1st March, 1947, see Gazette of India, 1946, Pt. I, p. 635.

² Restricted by s. 2 of the Excess Profits Tax Ordinance, 1943 (16 of 1943).

Provided further that the provisions of this section shall apply in respect of excess profits tax to which the section applies which became payable before the commencement of this Act, if the further sum referred to herein is deposited before the 1st day of July, 1942:

Provided further that in relation to excess profits tax payable under the Excess Profits Tax Act, 1940 in respect of any profits which are XV of 1940

Provided further that if it is subsequently found that the sum repaid in accordance with the provisions of this sub-section was in excess of the sum so repayable, the sum repaid in excess may be recovered in the same manner as excess profits tax may be recovered under the Excess Profits Tax Act, 1940 (XV of 1940), and notwithstanding anything contained in sub-section (7) of section 46 of the Indian Income-tax Act, 1922 (XI of 1922), as made applicable by section 21 of the Excess Profits Tax Act, 1940, such recovery may be made at any time.

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shall be deposited with the Central Government after the 28th day of February 1946.]

(2) Any sum deposited with the Central Government under sub-section (1) shall carry simple interest at the rate of two per cent. per annum and shall be repaid within twelve months of the date of termination of the present hostilities.

[Provided that if it is subsequently found that the sum so repaid was excessive, the excess repayment shall be recoverable, and the provisions of law referred to in sub-section (4) of section 2 of the Excess Profits Tax Ordinance, 1943, shall apply to the payment and recovery of the amount of the excess repayment as if that amount were a deposit required to be made under that section, but notwithstanding the provisions of sub-section (7) of section 46 of the Indian Income-tax Act, 1922, as applied by the said sub-section (4), such recovery may be made at any time.] XVI of 1943. XI of 1924.

(3) The Central Government may, by notification in the official Gazette, make rules for carrying out the purposes of this section and for prescribing the manner and conditions referred to in sub-section (5) of section 8.

¹ Ins. by s. 8 of the Indian Finance Act, 1944.

² Ins. by s. 13 of the Indian Finance Act, 1946 (7 of 1946) (with effect from 28th February 1946).

³ Ins. by s. 7 of the Indian Finance Act, 1947 (20 of 1947).

⁴ Supplemented by s. 2 of the Excess Profits Tax Ordinance, 1943 (16 of 1943).

⁵ For such Rules, see Gazette of India, 1942, Pt. I, pp. 699 and 743 or Gen. R. & O. Supplementary Vol. VIII, pp. 225-232.

SCHEDULE I.

Schedule to be inserted in the Indian Post Office Act, 1898.

(See section 7.)
THE FIRST SCHEDULE.

INLAND POSTAGE RATES.

(See section 7.)

Lett rs.

For a weight not exceeding one tola One and a half annas.
 For every tola, or fraction thereof, exceeding one tola . . . Half an anna.

Postcards.

Single Nine pies.
 Reply One and a half annas.

Book, Pattern and Sample Packets.

For the first five tolas or fraction thereof Nine pies.
 For every additional two and a half tolas, or fraction thereof, in excess of five tolas Three pies.

Registered Newspapers.

For a weight not exceeding ten tolas Quarter of an anna.
 For a weight-exceeding ten tolas and not exceeding twenty tolas Half an anna.
 For every twenty tolas, or fraction thereof, exceeding twenty tolas Half an anna.
 In the case of more than one copy of the same issue of a registered newspaper being carried in the same packet—
 For a weight not exceeding ten tolas Half an anna.
 For every additional five tolas, or fraction thereof in excess of ten tolas Quarter of an anna.
 Provided that such packet shall not be delivered at any addressee's residence but shall be given to a recognised agent at the post office.

Parcels.

For a weight not exceeding forty tolas Four annas.
 For every forty tolas, or fraction thereof, exceeding forty tolas Four annas.

SCHEDULE II.

(See section 8.)

PART I.

Rates of Income-tax.

A.—In the case of every individual, Hindu undivided family, un-registered firm and other association of persons not being a case to which paragraph B of this Part applies:—

(a) Where the total income does not exceed Rs. 2,000—

- | | Rates. |
|--|------------------------|
| 1. On the first Rs. 750 of total income | Nil |
| 2. On the next Rs. 1,250 of total income | Six pies in the rupee. |

Provided that no tax shall be payable on a total income which does not exceed Rs. 1,500.

(b) Where the total income exceeds Rs. 2,000—

	Rate.	Surcharge.
1. On the first Rs. 1,500 of total income	Nil Nil.	
2. On the next Rs. 3,500 of total income	Nine pies in the rupee	Six pies in the rupee.
3. On the next Rs. 5,000 of total income	One anna and three pies in the rupee.	Nine pies in the rupee.
4. On the next Rs. 5,000 of total income	Two annas in the rupee	One anna and two pies in the rupee.
5. On the balance of total income	Two annas and six pies in the rupee.	One anna and three pies in the rupee.

B.—In the case of every company and local authority, and in every case in which under the provisions of the Indian Income-tax Act, 1922, income-tax is to be charged at the maximum rate—

	Rate.	Surcharge.
On the whole of total income	Two annas and six pies in the rupee.	One anna and three pies in the rupee.

PART II.

Rates of Super-tax.

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which paragraphs B and C of this Part apply—

	Rate.	Surcharge.
1. On the first Rs. 25,000 of total income	Nil Nil	
2. On the next Rs. 10,000 of total income	One anna in the rupee	Six pies in the rupee.
3. On the next Rs. 20,000 of total income	Two annas in the rupee	One anna in the rupee.
4. On the next Rs. 70,000 of total income	Three annas in the rupee	One anna and six pies in the rupee.
5. On the next Rs. 75,000 of total income	Four annas in the rupee	Two annas in the rupee.
6. On the next Rs. 1,50,000 of total income	Five annas in the rupee	Two annas and six pies in the rupee.
7. On the next Rs. 1,50,000 of total income	Six annas in the rupee	Three annas in the rupee.
8. On the balance of total income	Seven annas in the rupee	Three annas and six pies in the rupee.

B.—In the case of every local authority—

	Rate.	Surcharge.
On the whole of total income	One anna in the rupee.	Six pies in the rupee.

C.—In the case of an association of persons being a co-operative society, other than the Sanikatta Saltowners' Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1912, or under an Act of the Provincial Legislature governing the registration of Co-operative Societies—

	Rate.	Surcharge.
1. On the first Rs 25,000 of total income	Nil.	Nil.
2. On the balance of total income	One anna in the rupee	Six pies in the rupee

D.—In the case of every company—

	Rate.
On the whole of total income	One anna and six pies in the rupee.

THE WEEKLY HOLIDAYS ACT, 1942.

Act No. XVIII of 1942.¹

[3rd April, 1942.]

An act to provide for the grant of weekly holidays to persons employed in shops, restaurants and theatres.

WHEREAS it is expedient to provide for the grant of weekly holidays to persons employed in shops, restaurants and theatres;

It is hereby enacted as follows:—

1. (1) This Act may be called the Weekly Holidays Act, 1942.

(2) It extends to ^{Whole} ~~all the Provinces of India.~~ ^{of Jammu & Kashmir} except the State

Short title,
extent and
commence-
ment.

(3) It shall come into force in a Province or in a specified area within a ~~Province~~ ^{State} only if the ~~Provincial~~ ^{State} Government by notification in the official Gazette so directs.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "establishment" means a shop, restaurant or theatre;

(b) "day" means a period of twenty-four hours beginning at mid-night;

(c) "restaurant" means any premises in which is carried on principally or wholly the business of supplying meals or

¹ For Statement of Objects and Reasons, see Gazette of India, 1941, Pt. V, p. 142; and for Report of Select Committee, see *ibid*, 1942, Pt. V, p. 55.

² Subs. by the A. O. 1948 for "the whole of British India".

refreshments to the public or a class of the public for consumption on the premises but does not include a restaurant attached to a theatre;

- (d) "shop" includes any premises where any retail trade or business is carried on, including the business of a barber or hair dresser, and retail sales by auction, but excluding the sale of programmes, catalogues and other similar sales at theatres;
- (e) "theatre" includes any premises intended principally or wholly for the presentation of moving pictures, dramatic performances, or stage entertainments;
- (f) "week" means a period of seven days beginning at midnight on Saturday.

Closing of shops.

3. (1) Every shop shall remain entirely closed on one day of the week, which day shall be specified by the shop-keeper in a notice permanently exhibited in a conspicuous place in the shop.

(2) The day so specified shall not be altered by the shop-keeper more often than once in three months.

Weekly holidays in shops, restaurants and theatres.

4. Every person employed otherwise than in a confidential capacity or in a position of management in any shop, restaurant or theatre shall be allowed in each week a holiday of one whole day:

Provided that nothing in this section shall apply to any person whose total period of employment in the week including any days spent on authorised leave is less than six days or entitle to an additional holiday a person employed in a shop who has been allowed a whole holiday on the day on which the shop has remained closed in pursuance of section 3.

Additional half-day closing or holiday.

5. (1) The ~~Provincial~~ Government may, by notification in the official Gazette, require in respect of shops or any specified class of shops that they shall be closed at such hour in the afternoon of one week-day in every week in addition to the day provided for by section 3 as may be fixed by the ~~Provincial~~ Government, and, in respect of theatres and restaurants or any specified class of either or both, that every person employed therein otherwise than in a confidential capacity or in a position of management shall be allowed in each week an additional holiday of one-half-day commencing at such hour in the afternoon as may be fixed by the ~~Provincial~~ Government.

(2) The ~~Provincial~~ Government may, for the purposes of this section, fix different hours for different shops or different classes of shops or for different areas or for different times of the year.

(3) The weekly day on which a shop is closed in pursuance of a requirement under sub-section (1) shall be specified by the shop-keeper in a notice permanently exhibited in a conspicuous place in the shop and shall not be altered by the shop-keeper more often than once in **three months**.

6. No deduction or abatement of the wages of any person employed in an establishment to which this Act applies shall be made on account of any day or part of a day on which the establishment has remained closed or a holiday has been allowed in accordance with sections 3, 4 and 5, and if such person is employed on the basis that he would not ordinarily receive wages for such day or part of a day he shall none the less be paid for such day or part of a day the wages he would have drawn had the establishment not remained closed or the holiday not been allowed on that day or part of a day.

No deduction or abatement to be made from wages.

7. (1) The ^{State} Provincial Government may, by notification in the official Gazette, appoint persons to be inspectors for the purposes of this Act within such local limits as it may assign to each such person.

Inspectors.

(2) Every inspector appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

8. (1) Subject to any rules made in this behalf by the ^{State} Provincial Government, an inspector may, within the local limits for which he is appointed,—

Powers of inspectors.

(a) enter and remain in any establishment to which this Act applies with such assistants, if any, being servants of the Crown, as he thinks fit;

(b) make such examination of any such establishment and of any record, register or notice maintained therein in pursuance of rules made under clause (c) of sub-section (2) of section 10, and take on the spot or otherwise such evidence of any person as he may deem necessary for carrying out the purposes of this Act;

(c) exercise such other powers as may be necessary for carrying out the purposes of this Act.

(2) Any person having the custody of any record, register or notice maintained in pursuance of rules made under clause (c) of sub-section (2) of section 10, shall be bound to produce it when so required by the inspector, but no person shall be compellable to answer any question if the answer may tend directly or indirectly to criminate himself.

9. In the event of any contravention of the provisions of section 3, of section 4, of a requirement imposed by notification under sub-section (1) of section 5, of section 6, or of the rules made under clause (c) of sub-section (2) of section 10, the proprietor or other person responsible for the management of the establishment in which such contravention takes place shall be punishable with fine which may extend, in the case of the first offence, to twenty-five rupees, and, in the case of a second or subsequent offence, to two hundred and fifty rupees.

Penalties.

10. (1) The ^{State} Provincial Government may, subject to the condition of previous publication by notification in the official Gazette, make rules for carrying out the purposes of this Act.

Rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) define the persons who shall be deemed to be employed in a confidential capacity or in a position of management for the purpose of sections 4 and 5;
- (b) regulate the exercise of their powers and the discharge of their duties by inspectors;
- (c) require registers and records to be maintained and notices to be displayed in establishments to which this Act applies and prescribe the form and contents thereof.

Power to
exemption
and suspen-
sion.

11. The Central Government in respect of establishments under its control, and the Provincial Government in respect of all other establishments within the Province may, subject to such conditions, if any, as it thinks fit to impose, exempt any establishment to which this Act applies from all or any specified provisions of this Act, and may, on any special occasion in connection with a fair or festival or a succession of public holidays, suspend for a specified period the operation of this Act.

THE INDUSTRIAL STATISTICS ACT, 1942.

Act No. XIX of 1942.¹

[2nd April, 1942.]

Enacted to facilitate the collection of statistics of certain kinds relating to industries.

1942 **W**HEREAS it is expedient to facilitate the collection of statistics of certain kinds relating industries;

It is hereby enacted as follows:—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Industrial Statistics Act, 1942.

(2) It extends to ²[all the Provinces of India.] *except the State of*

(3) It shall come into force in a Province on such ³date as the Provincial Government may, by notification in the official Gazette, appoint in this behalf for such Province.

¹ For Statement of Objects and Reasons, see Gazette of India, 1942, Pt. V, p. 41.

This Act has been applied to the partially excluded areas of the Province of Orissa, see Orissa Government Notification No. 1481-III-L-27/42-Com. (c) dated the 1st September 1942, and to the Darjeeling Dist. with effect from 11th March 1943, see the late Ben Government Notification No. 923-Com., dated the 9th March 1943

This Act has been supplemented in Assam by Assam Act 8 of 1946,

² Subs. by the A.O. 1948 for "the whole of British India".

³ In Orissa, including the partially excluded areas, on 1st September 1942, see Orissa Government Notification No. 8482. III. L-27/42, Com., dated 11th September 1942; and in Bengal, on 15th March 1943, see the late Ben Government Notification No. 924, Com., dated the 9th March 1943.

2. In this Act "prescribed" means prescribed in rules made under Definition, this Act or in any form prescribed by those rules.

3. (1) The Provincial Government may, by notification in the Collection of official Gazette, direct that statistics shall be collected relating to any Statistics. of the following matters, namely:—

- (a) any matter relating to factories,
- (b) any of the following matters so far as they relate to welfare of labour and conditions of labour, namely:—
 - (i) prices of commodities,
 - (ii) attendance,
 - (iii) living conditions, including housing, water supply and sanitation,
 - (iv) indebtedness,
 - (v) rents of dwelling-houses,
 - (vi) wages and other earnings,
 - (vii) provident and other funds provided for labour,
 - (viii) benefits and amenities provided for labour,
 - (ix) hours of work,
 - (x) employment and unemployment,
 - (xi) industrial and labour disputes,

and thereupon the provisions of this Act shall apply to the collection of those statistics.

XV of
34.

(2) In clause (a) of sub-section (1), "factory" means a factory as defined in clause (j) of section 2 of the Factories Act, 1934, or any premises deemed to be a factory in pursuance of a declaration made under sub-section (1) of section 5 of that Act.

4. The Provincial Government may appoint an officer to be the statistics authority for the purposes of the collection of any statistics under this Act.

Appoint-
ment of Sta-
tistics
authority.

5. (1) The statistics authority may serve or cause to be served on any person a notice requiring him to furnish, at such intervals and in such form and with such particulars as may be prescribed, such information or returns relating to any matter in respect of which statistics are to be collected and to such authority or person and in such manner and at such times as may be prescribed.

Power of
Statistics
authority to
call for re-
turns and
information.

(2) The notice referred to in sub-section (1) may be served by post.

6. The statistics authority or any person authorized by him in writing in this behalf shall, for the purposes of the collection of any statistics under this Act, have access to any relevant record or document in the possession of any person required to furnish any information or

Right of
access to re-
cord or do-
cument.

return under this Act, and may enter at any reasonable time any premises wherein he believes such record or document to be, and may ask any question necessary for obtaining any information required to be furnished under this Act.

Restriction
on the pub-
lication of
returns and
information.

7. (1) No individual return, and no part of an individual return, made, and no information with respect to any particular undertaking given, for the purposes of this Act, shall, without the previous consent in writing of the owner for the time being of the undertaking in relation to which the return or information was made or given, or his authorized agent, be published in such manner as would enable any particulars to be identified as referring to a particular undertaking.

(2) Except for the purposes of a prosecution under this Act or under the Indian Penal Code, no person not engaged in connection with the collection of statistics under this Act shall be permitted to see any individual return or information referred to in sub-section (1). XLV of 1860.

Penalties.

8. If any person required to furnish any information or any return—

- (a) wilfully refuses or without lawful excuse neglects to furnish such information or return as required under this Act, or
- (b) wilfully furnishes or causes to be furnished any information or return which he knows to be false, or
- (c) refuses to answer or wilfully gives a false answer to any question necessary for obtaining any information required to be furnished under this Act,

or if any person impedes the right of access to relevant records and documents or the right of entry conferred by section 6, he shall for each such offence be punishable with fine which may extend to five hundred rupees, and in the case of a continuing offence [with a further fine] which may extend to two hundred rupees for each day after the first during which the offence continues; and in respect of false information, returns or answers the offence shall be deemed to continue until true information or a true return or answer has been given or made.

Penalty for
improper
disclosure of
information
or returns.

9. If any person engaged in connection with the collection of statistics under this Act wilfully discloses any information or the contents of any return given or made under this Act otherwise than in the execution of his duties under this Act or for the purposes of the prosecution of an offence under this Act or under the Indian Penal Code, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both imprisonment and fine.

XLV of 1860.

Subs. for "to a further fine" by s. 3^e and Sch. II of the Repealing and Amending Act, 1942 (25 of 1942).

10. No prosecution under section 8 shall be instituted except by or with the sanction of the statistics authority and no prosecution under section 9 shall be instituted except by or with the sanction of the Provincial Government.

Cognizance
of offences.

11. The Central Government may give directions to a Provincial Government as to the carrying into execution of this Act in the Province.

Power of the
Central
Government
to give
directions.

12. (1) The Provincial Government may, subject to the condition of previous publication by notification in the official Gazette, make rules for carrying out the purposes of this Act.

Power of
Provincial
Govern-
ments to
make rules.

(2) Without prejudice to the generality of the foregoing powers, rules may be made under this section regulating the exercise of the right of access to documents and the right of entry conferred by section 6.

THE FEDERAL COURT (SUPPLEMENTAL POWERS) ACT, 1942.

Act No. XXVI of 1942.¹

[1st October, 1942.]

An Act to confer supplemental powers on the Federal Court.

WHEREAS it is expedient to confer certain supplemental powers on the Federal Court;

It is hereby enacted as follows:—

1. This Act may be called the Federal Court (Supplemental Short title. Powers) Act, 1942.

2. The Federal Court shall have power to delegate to the Registrar of the Court or any other official of the Court, by name or generally by designation, any judicial, quasi-judicial and non-judicial duties and the Registrar or such official in the discharge of any such delegated duties shall have power to administer oaths.

Power to
delegate
duties.

¹ For Statement of Objects and Reasons, see Gazette of India, 1941, Pt. V, p. 189; and for Report of Select Committee, see *ibid*, 1942, Pt. V, p. 35.

The Act has been applied to the Chota Nagpur Division of the Province of Bihar, see Bihar Government Notification No. 2521-J/A-42/42, dated the 20th November 1943, and to the Santhal Parganas Dist., see Bihar Government Notification No. 2522-J/A-42/42, dated the 20th November, 1943.

THE INDIAN FINANCE ACT, 1943.

Act No. VIII of 1943.¹

[29th March, 1943.]

An Act to fix the duty on salt manufactured in, or imported by land into, certain parts of ^{India} ~~the provinces~~ to fix maximum rates of postage under the Indian Post Office Act, 1898, to continue for a further period of one year the additional duties of customs imposed by section 6 of the Indian Finance Act, 1942, to fix rates of income-tax and super-tax, to continue the charge and levy of excess profits tax and fix the rate at which excess profits tax shall be charged, and to amend the Indian Finance (Supplementary and Extending) Act, 1931.

WHEREAS it is expedient to fix the duty on salt ^{India} ~~manufactured in, or imported by land into, certain parts of ^{the} provinces~~, to fix maximum rates of postage under the Indian Post Office Act, 1898, to continue for a further period of one year the additional duties of customs imposed by section 6 of the Indian Finance Act, 1942, to fix rates of income-tax and super-tax, to continue the charge and levy of excess profits tax and fix the rate at which excess profits tax shall be charged, and to amend the Indian Finance (Supplementary and Extending) Act, 1931;

It is hereby enacted that—

short title
and extent.

(2) It extends to the whole of India except the territories to which immediately before the 1st November 1956, were comprised in Part B State.

fixation of
salt duty.

extends to
this

2. The provisions of section 7 of the Indian Salt Act, 1882, shall, in so far as they enable the Central Government to impose by rule made under that section a duty on salt manufactured in, or imported into, any part of ^{the} ~~the~~ provinces, be construed as if, for the year beginning on the 1st day of April, 1943, they imposed such duty at the rate of one rupee and four annas per maund of eighty-two and two-sevenths pounds avoirdupois of salt manufactured in, or imported by land into, any such part, and such duty shall, for all the purposes of the said Act, be deemed to have been imposed by rule made under that section.

¹ For Statement of Objects and Reasons, see Gazette of India, 1943. Pt. V, p. 80

This Act has been applied to the Darjeeling Dist. with effect from 29th March 1943, see the late Ben. Government Notification No. 8101-F.B. dated the 8th May, 1943, and to the partially excluded areas in the Province of Orissa, see Orissa Government Notification No. 16450-Tax-5/43-F. (c), dated the 4th August 1943.

² Subs. by the A. O. 1948 for "British India".

³ Subs. by the A. O. 1948 for "the whole of British India".

3. For the year beginning on the 1st day of April, 1943, the Schedule contained in Schedule I to this Act shall be inserted in the Indian Post Office Act, 1898, as the First Schedule to that Act. Inland postage rates.

4. The additional duties of customs on certain goods chargeable with a duty of customs under the First Schedule to the Indian Tariff Act, 1934, or under the said Schedule read with any notification of the Central Government for the time being in force, imposed up to the 31st day of March, 1943, by section 6 of the Indian Finance Act, 1942 shall be levied and collected as provided in that section up to the 31st day of March, 1944. Continuation of additional duties of customs imposed by section 6, Act XII of 1942.

5. (1) Subject to the provisions of sub-sections (2) and (3),— Income-tax and super-tax.

(a) income-tax for the year beginning on the 1st day of April, 1943, shall be charged at the rates specified in Part I of Schedule II increased in the cases to which sub-paragraph (b) of paragraph A and paragraph B of that Part apply by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of income-tax, and

(b) rates of super-tax for the year beginning on the 1st day of April, 1943, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be those specified in Part II of Schedule II increased in the cases to which paragraphs A, B and C of that Part apply by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of super-tax.

(2) In making any assessment for the year ending on the 31st day of March, 1944,—

(a) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" or under the head "Interest on Securities" or any income from dividends in respect of which he is deemed under section 49B of the Indian Income-tax Act, 1922, to have paid income-tax imposed in ~~the Provinces~~, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1942, on his total income the same proportion as the amount of such inclusions bears to his total income;

(b) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries", on which super-tax has been or might have been deducted under the provisions of sub-section (2) of section 18 of the Indian Income-tax Act, 1922, the super-tax payable by

¹ Subs. by the A. O. 1948. for "British India".

the assessee on that portion of his total income which consists of such inclusions shall be an amount bearing to the total amount of super-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1942, on his total income the same proportion as the amount of such inclusions bears to his total income. XII of 194

(3) In cases to which section 17 of the Indian Income-tax Act, 1922, applies, the tax chargeable shall be determined as provided in that section but with reference to the rates imposed by sub-section (1) of this section, and in accordance with the provisions of sub-section (2) of this section where applicable. XI of 1922

(4) For the purposes of this section and of the rates of tax imposed thereby the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922. XI of 1922.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (2) no tax shall be payable in cases to which sub-paragraph (a) of paragraph A of Part I of Schedule II applies where the assessee deposits with the Central Government in such manner and in accordance with such conditions as the Central Government may by rule prescribe for the purposes of this sub-section an amount representing not less than one rupee for every complete unit of twenty-five rupees by which his total income exceeds seven hundred and fifty rupees.

(6) A deposit made in accordance with the provisions of sub-section (5) shall not in any way be capable of being charged and shall not be liable to attachment under any decree or order of any Civil, Revenue or Criminal Court in respect of any debt or liability incurred by the depositor and neither the Official Assignee nor any receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to or have any claim on any such deposit. V of 1920.

(7) Where the total income of an assessee referred to in sub-paragraph (b) of paragraph A of Part I of Schedule II does not exceed six thousand rupees, an amount representing one rupee for every complete unit of two hundred rupees of his total income as reduced by the income, if any, exempt from tax under any provision of the Indian Income-tax Act, 1922, or any notification issued thereunder shall be funded for the assessee's benefit and shall be paid to him on such date, not more than twelve months after the termination of the present hostilities, as the Central Government may fix: XI of 1922.

Explanation.—In computing the amount to be funded under this sub-section if there is an incomplete unit amounting to one hundred rupees or more it shall be reckoned as a complete unit of two hundred rupees.

(8) Notwithstanding anything contained in sub-section (7) of section 8 of the Indian Finance Act, 1942, the amount to be funded under that sub-section for the assessee's benefit in respect of any assessment XII of 1942.

922. for the year ending on the 31st day of March, 1943 shall be calculated on his total income as reduced by the income, if any, exempt from tax under any provision of the Indian Income-tax Act, 1922, or any notification issued thereunder.

(9) The Central Government may, by notification in the official Gazette, make rules prescribing the manner and conditions referred to in sub-section (5).

1940. 6. (1) In sub-clause (a) of clause (6) of section 2 of the Excess Profits Tax Act, 1940, for the words and figures "31st day of March, 1943" the words and figures "31st day of March, 1944" shall be substituted. Continuance of and rate of excess profits tax.

940. (2) The excess profits tax imposed by section 4 of the Excess Profits Tax Act, 1940, shall, in respect of any chargeable accounting period beginning after the 31st day of March, 1943, be an amount equal to sixty-six and two-thirds per cent. of the amount by which the profits of the business during that chargeable accounting period exceed the standard profits.

7. In section 5 of the ²Indian Finance (Supplementary and Extending) Act, 1931, the words "motor spirit or kerosene" and the words and figures "or under the Motor Spirit (Duties) Act, 1917, or under the Indian Finance Act, 1922" shall be omitted, and for the words "or under any of the said Acts" the words "or under the said Act" shall be substituted. Amendment of section 5 Indian Finance (Supplementary and Extending) Act, 1931.

SCHEDULE I.

Schedule to be inserted in the Indian Post Office Act, 1898.

(See section 3.)

"THE FIRST SCHEDULE.

INLAND POSTAGE RATES.

(See section 7.)

Letters.

For a weight not exceeding one tola	One and a half annas.
For every tola, or fraction thereof, exceeding one tola	One anna.

Postcard.

Single	Nine pies.
Reply	One and a half annas.

¹ For such rules, see Gazette of India, 1943, Pt. I, p. 374 or Gen. R & O., Supplementary Vol. VIII, p. 232.

² Rep. by s. 39 and Sch. III of the Central Excises and Salt Act, 1944 (1 of 1944) (with effect from 28th February, 1944).

SCHEDULE I—contd.

Book, Pattern and Sample Packets.

For the first five tolas or fraction thereof	Nine pies.
For every additional two and a half tolas, or fraction thereof, in excess of five tolas	Three pies.

Registered Newspapers.

For a weight not exceeding ten tolas	Quarter of an anna.
For a weight exceeding ten tolas and not exceeding twenty tolas	Half an anna.
For every twenty tolas, or fraction thereof, exceeding twenty tolas	Half an anna.
In the case of more than one copy of the same issue of a registered newspaper being carried in the same packet—	
For a weight not exceeding ten tolas	Half an anna.
For every additional five tolas, or fraction thereof, in excess of ten tolas	Quarter of an anna.
Provided that such packet shall not be delivered at any addressee's residence but shall be given to a recognised agent at the post office.	

Parcels.

For a weight not exceeding forty tolas	Six annas.
For every forty tolas, or fraction thereof exceeding forty tolas	Four annas."

SCHEDULE II.

(See section 5.)

PART I.

Rates of Income-tax.

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which paragraph B of this Part applies:—

(a) Where the total income does not exceed Rs. 2,000—

	Rate.
1. On the first Rs. 750 of total income	Nil.
2. On the next Rs. 1,250 of total income	Six pies in the rupee.
Provided that no tax shall be payable on a total income which does not exceed Rs. 1,500.	

(b) Where the total income exceeds Rs. 2,000—

	Rate.	Surcharge.
1. On the first Rs. 1,500 of total income	Nil.	Nil.
2. On the next Rs. 3,500 of total income	Nine pies in the rupee	Six pies in the rupee.
3. On the next Rs. 5,000 of total income	One anna and three pies in the rupee.	Ten pies in the rupee.
4. On the next Rs. 5,000 of total income	Two annas in the rupee.	One anna and four pies in the rupee.
5. On the balance of total income	Two annas and six pies in the rupee.	One annas and eight pies in the rupee.

XI of 1922. B.—In the case of every company and local authority, and in every case in which under the provisions of the Indian Income-tax Act, 1922, income-tax is to be charged at the maximum rate—

	Rate.	Surcharge.
On the whole of total income	Two annas and six pies in the rupee.	One anna and eight pies in the rupee.

PART II.

Rates of Super-tax.

A.—In the case of every individual, Hindu undivided family, un-registered firm, and other association of persons, not being a case to which paragraphs B and C of this Part apply—

	Rate.	Surcharge.
1. On the first total income Rs. 25,000 of	Nil.	Nil.
2. On the next total income Rs. 10,000 of	One anna in the rupee.	One anna in the rupee.
3. On the next total income Rs. 20,000 of	Two annas in the rupee.	One anna and six pies in the rupee.
4. On the next total income Rs. 70,000 of	Three annas in the rupee.	Two annas in the rupee.
5. On the next total income Rs. 75,000 of	Four annas in the rupee.	Two annas and six pies in the rupee.
6. On the next total income Rs. 1,50,000 of	Five annas in the rupee.	Three annas in the rupee.
7. On the next total income Rs. 1,50,000 of	Six annas in the rupee.	Three annas in the rupee.
8. On the balance of total income	Seven annas in the rupee.	Three annas and six pies in the rupee.

B.—In the case of every local authority—

	Rate.	Surcharge.
On the whole of total income	One anna in the rupee	One anna in the rupee

C.—In the case of an association of persons being a co-operative society, other than the Sanikatta Saltowners' Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1912, or under an Act of the Provincial Legislature governing the registration of Co-operative Societies—

	Rate.	Surcharge.
1. On the first total income Rs. 25,000 of	Nil.	Nil.
2. On the balance of total income	One anna in the rupee.	One anna in the rupee.

D.—In the case of every company—

	Rate.
On the whole of total income	Two annas in the rupee.

THE RECIPROCITY ACT, 1943.

Act No. IX of 1943.¹

[31st March 1943.]

An Act to make provisions on a basis of reciprocity in regard to entry into, travel, residence, the acquisition, holding or disposal of property, the enjoyment of educational facilities, the holding of public office, or the carrying on of any occupation, trade, business or profession in ²[~~the provinces of India~~] by, and the franchise in ²[~~the provinces of India~~] of, persons domiciled in British Possessions.

Preamble.

WHEREAS it is expedient to make provisions on a basis of reciprocity in regard to entry into, travel, residence, the acquisition, holding or disposal of property, the enjoyment of educational facilities, the holding of public office, or the carrying on of any occupation, trade, business or profession in ²[~~the Provinces of India~~] by, and the franchise in ²[~~the Provinces of India~~] of, persons domiciled in British Possessions;

It is hereby enacted as follows:—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Reciprocity Act, 1943.

(2) It extends to ³[~~all the Provinces~~ ^{whole} of India].

⁴[(3) It shall come into force on the 1st day of September, 1943.]

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context—

⁵[(a) 'British possession' means any part of His Majesty's dominions ~~exclusive of~~ ²[~~India~~], and includes a protectorate or other territory administered by a British possession as a mandatory on behalf of the League of Nations; and where parts of those dominions are under both a central and a local legislature, the expression shall mean either each part under a local legislature or all parts under the central legislature];

(b) "entry" includes landing at any port in ²[~~the Provinces~~] during the stay in ²[~~the Provinces~~] of a ship or aircraft on its way to a destination outside ²[~~the Provinces~~];

¹ For Statement of Objects and Reasons, see Gazette of India, 1941, Pt. V, p. 162; and for Report of Select Committee, see *ibid*, 1943, Pt. V, p. 57.

² Suba. by the A. O. 1948 for "British India".

³ Suba. by the A. O. 1948 for "the whole of British India".

⁴ Suba. by s. 2 of the Reciprocity (Amendment) Act, 1943 (22 of 1943), for the original sub-section which read "It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint".

⁵ Suba. by s. 3 of Act 22 of 1943 for the original definition.

¹[3. Where by the law or practice of any British possession persons of Indian origin are subject in that British possession to disabilities in respect of entry into, or travel, residence, the acquisition, holding or disposal of property, the enjoyment of educational facilities, the holding of public office, the carrying on of any occupation, trade, business or profession, or the exercise of the franchise in, that British possession, to which in respect of the like matters in ²~~the Provinces~~ persons domiciled in that British possession are not subject in ³~~the Provinces~~, the Central Government may, by ⁴notification in the official Gazette, direct that the same disabilities or disabilities as similar thereto as may be, shall, notwithstanding anything contained in any other law for the time being in force, be imposed in ⁵~~the Provinces~~ on persons not being of Indian origin who are domiciled in that British possession.]

Power of Central Government to impose reciprocal disabilities on persons domiciled in British possessions.

- India

4. If any person alleged to be domiciled in any British Possession and to be subject to the provisions of this Act pleads that he is not so domiciled, or that the provisions of this Act do not apply to him, the onus of proving the truth of such a plea shall be on him.

Burden of proof on person claiming exemption.

⁴[5. Any direction made by the Central Government under section 3 imposing disabilities in respect of entry into or travel or residence in ²~~the Provinces~~ upon persons domiciled in a British possession shall not, until the expiry of six months after the termination of the present hostilities, apply to any person domiciled in that British possession who is a member of its armed forces.]

Direction imposing disabilities in respect of entry, travel and residence not to apply to armed forces.

⁵[6. (1) The Central Government may, by notification in the official Gazette, make ⁶rules for carrying out the purposes of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, rules made under this section may provide—

(a) for the setting up of machinery to ascertain the disabilities in respect of any of the matters specified in section 3 to which persons of Indian origin are subject in any British possession;

(b) for the establishment of a suitable agency to administer the rules and for defining its functions and powers;

(c) for specifying the disabilities that shall, when a direction has been made under section 3, be imposed in ²~~the Pro-~~

¹ Subs. by s. 4 of the Reciprocity (Amendment) Act, 1943 (22 of 1943) for the original section.

² Subs. by the A. O. 1948 for "British India".

³ For such notifications see Gen. R. and O (1943-45) Vol. pp. 488 and 489 or Gazette of India, 1944, Extraordinary, pp. 1487 and 1488.

⁴ Subs. by s. 5 of Act 22 of 1943 for the original section.

⁵ Subs. by s. 6, *ibid*, for the original section.

⁶ For the Reciprocity (South Africa) Rules, 1944, the Reciprocity (Natal and the Transvaal) Rules, 1944 and the Reciprocity (South Africa) (Local Franchise) Rules, 1944, see Gazette of India, 1944, Extraordinary, pp. 1527-1529 or Gen. R. & O. (1943-45) Vol., pp. 489-500.

~~vinces~~] on persons not being of Indian origin who are domiciled in any British possession and for the imposition on them of the disabilities so specified;

(d) for the enforcement, by the prescription of a penalty by way of imprisonment or fine or both, of any rule made under clause (c);

(e) for authorising the arrest of any person contravening or reasonably suspected of contravening any rule made under clause (c), and for prescribing the duties of public servants and others in regard to such arrests.]

Repeal of
Act III of
1924.

¹[7. The Immigration into India Act, 1924 (III of 1924), is hereby repealed.]

THE DELHI MUSLIM WAKFS ACT, 1943.

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¹Act No. XIII of 1943.

[1st April, 1943.]

An²Act to provide for the better administration of Muslim Wakfs
in the Province of Delhi.

WHEREAS it is expedient to provide for the better administration
of Muslim Wakfs in the Province of Delhi;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Delhi Muslim Wakfs Act, 1943. Short title,
extent and
commence-
ment.
(2) It extends to the whole of the ^{State}Province of Delhi.

(3) Section 71 shall come into force at once. The rest of this Act shall come into force on such ²date, not being later than six months from the date on which it is first published in the official Gazette after having received the assent of the Governor General, as the Provincial Government may, by notification, appoint.

2. In this Act, unless there is anything repugnant in the subject Definitions, or context,—

- (a) 'committee' means a committee appointed by the Majlis under section 20;
(b) 'District Judge' includes a Subordinate Judge of the first class empowered by the District Judge to discharge any function assigned to the District Judge under this Act;
(c) 'Majlis' means the Sunni Majlis-e-Awkaf, Delhi, or the Shia Majlis-e-Awkaf, Delhi, established under this Act;
(d) 'member' means a member of the Majlis;
(e) 'mutawalli' means any person, by whatever designation known, appointed to administer any wakf either verbally or by or under any deed or instrument or in accordance with the usage of such wakf or the District Judge or any other competent authority, and includes any person appointed by a mutawalli to perform the duties of a mutawalli and any committee or any person for the time being managing or administering any wakf property as such;

¹ For Statement of Objects and Reasons, see Gazette of India, 1941, Pt. V, p. 39 and for Report of Joint Committee, see *ibid.*, 1943, Pt. V, p. 9.

² The 5th October 1943, see Gazette of India, 1943, Pt. II-A, p. 324.

(f) 'Nazir' means the person appointed to be the Nazir-e-Awakaf under this Act;

(g) 'person interested in a wakf' means any person who is entitled to receive any pecuniary or other benefit from the wakf and includes—

(i) any person who has a right to pray or to perform any religious rite in a mosque, idgah, imambara, dargah, khalakah, maqbara, grave-yard, or any other religious institution connected with the wakf or to participate in any religious or charitable ministration under the wakf;

(ii) the wakif and any descendant of the wakif; and

(iii) the mutawalli;

(h) 'prescribed' means prescribed by rules made by the ~~Provincial~~ ^{State} Government under this Act;

(i) 'qualified accountant' means any person or class of persons declared by the ~~Provincial~~ ^{State} Government, by notification in the official Gazette, to be qualified accountants for the purposes of this Act;

(j) 'Sadr' means the person appointed to be the Sadr of the Majlis under this Act;

(k) 'wakf' means the permanent dedication of any property, movable or immovable, for any purpose recognised by Muslim law as religious, pious or charitable and includes a wakf by user; and

(l) 'wakif' means a person who makes such a dedication as is referred to in clause (k).

Application
of Act.

3. This Act shall apply to all wakfs except the wakfs referred to in and made lawful by the Mussalman Wakf Validating Act, 1913. VI of 1913.

Act XX of
1863, Act
XIV of 1920,
Act XLII of
1923 and
section 92 of
Act V of
1908 not to
apply to
wakfs.

4. The Religious Endowments Act, 1863, the Charitable and Religious Trusts Act, 1920, the Mussalman Wakf Act, 1923 and section 92 of the Code of Civil Procedure, 1908, shall not apply to wakfs to which this Act applies. XX of 1863,
XIV of 1920
XLII of
1923.
V of 1908.

CHAPTER II.

CONSTITUTION OF THE MAJLIS.

Constitution
and incorpo-
ration of the
Majlis.

5. (1) As soon as possible after this Act comes into force there shall be established for the ~~Province~~ ^{City} of Delhi, a Majlis, to be called the Sunni Majlis-e-Awakaf, Delhi, and a Majlis to be called the Shia Majlis-e-Awakaf, Delhi, to discharge respectively in regard to Sunni wakfs and Shia wakfs in the Province of Delhi the functions assigned to the Majlis by this Act.

(2) The Majlis shall be a body corporate by the name of the Sunni Majlis-e-Awakaf, Delhi, or Shia Majlis-e-Awakaf, Delhi, as the case may be, and shall have perpetual succession and a common seal, with

power to acquire and hold property, both movable and immovable, and to transfer any such property subject to the prescribed conditions and restrictions, and shall by the said name sue and be sued.

6. The Sunni Majlis-e-Awakaf, Delhi, shall consist of fifteen mem- Strength of
bers and the Shia Majlis-e-Awakaf, Delhi, shall consist of five members. the Majlis.

7. (1) Of the members of the Sunni Majlis-e-Awakaf, Delhi,— Compositio
(a) two shall be persons nominated by the Provincial Govern- of Majlis.
ment;

(b) two shall be persons elected by a joint electorate consisting of the Muslim members of the Delhi Municipal Committee, the New Delhi Municipal Committee, the Notified Area Committees and the Delhi District Board;

(c) two shall be persons elected by the Muslim members of the Anglo-Arabic College and Schools Society and the Jamia Millia Association jointly;

(d) one shall be a person elected by the mutawallis of wakfs registered under this Act;

(e) five shall be persons elected by the Muslim members ^{1 * * *}
of the Central Legislature ^{2 * *};
~~Parliament~~

(f) three shall be persons co-opted by the members referred to in clauses (a) to (e).

(2) Of the members of the Shia Majlis-e-Awakaf, Delhi,—

(a) one shall be a person nominated by the ~~Provincial~~ ^{State} Govern-
ment;

(b) two shall be persons elected by the members of the Anjuman-e-Shiatus-Safa, Delhi;

(c) one shall be a person elected by the members of the Anjuman-e-Isna-Ashariya, New Delhi;

(d) one shall be a person elected by the members of the Anjuman Husaini, Delhi.

(3) The members referred to in clauses (a), (b), (c), (d) and (f) of sub-section (1) shall be persons who are and have been for at least three years resident in the ~~Province~~ ^{State} of Delhi at the time of nomination, election or co-option.

(4) The member referred to in clause (d) of sub-section (1) may, on the first constitution of the Majlis, be nominated by the ~~Provincial~~ ^{State} Government, but a person so nominated shall hold office only until he can be replaced by a member elected as provided in that clause, and the member so elected shall hold office only for so long as the member replaced would have held office had he not been replaced.

¹ The words "of the two chambers" were rep. by the A.O. 1948.

² The word "jointly" rep., *ibid*.

(5) Of the members referred to in clause (f) of sub-section (1) one shall be an engineer, one shall be a lawyer of not less than ten years' standing and one shall be an Alim.

¹[(6) The Majlis may accept the resignation of any of its members and the vacancy so caused shall be filled in the manner provided by section 10.]

Appointment
of Sadr and
term of office
of members.

8. (1) The Majlis shall elect as Sadr of the Majlis one of the persons appointed to be members thereof ²[and may accept the resignation of a Sadr so elected and elect another Sadr in his place.]

(2) The term of office of a member of the Majlis shall, save as otherwise provided in this Act, be five years from the date of the publication of his name in the official Gazette under section 12, and shall include any further period which may elapse between the expiration of the said five years and the date of the first meeting of the next succeeding Majlis at which a quorum is present.

Disqualifica-
tions of
members.

9. A person shall not be eligible to be or to remain a member if such person—

(a) in the case of the Sunni Majlis-e-Awakf, Delhi, is not a Sunni Muslim, and in the case of the Shia Majlis-e-Awakf, Delhi, is not a Shia Muslim;

(b) is less than twenty-five years of age;

(c) is of unsound mind and stands so declared by a competent Court;

(d) has applied for being adjudged an insolvent or is an undischarged insolvent;

(e) has been convicted of any offence involving moral turpitude;

(f) has, on any previous occasion, been removed from office under any provision of this Act, or by order of a competent Court from any position of trust for mismanagement or corruption; or

(g) except in the case of a person to be elected by the mutawallis of wakfs registered under this Act, is a mutawalli of, or holds any office of profit under, any wakf to which this Act applies.

Filling of
casual
vacancies.

10. If any member is unable by reason of his death, resignation, removal or otherwise to complete his full term of office, the vacancy so caused shall be filled by the nomination, election, or co-option, as the case may be, of another person and the person so appointed shall fill the vacancy for the unexpired portion of the term for which the member in whose place such person is nominated, elected or co-opted would otherwise have continued in office.

¹ Ins. by s. 2 of the Delhi Muslim Wakfs (Amendment) Act, 1947 (13 of 1947).

² Ins. by s. 3, *ibid.*

11. If any of the bodies referred to in clauses (b), (c), (d), (e) or (f) of sub-section (1) or clauses (b), (c) or (d) of sub-section (2) of section 7 fails, within such time as the Provincial Government considers reasonable, to make the appointments referred to in those clauses, or, on the occurrence of any casual vacancy, to fill that vacancy as provided in section 10, the Provincial Government may nominate persons as members of the Majlis to fill such vacancies.

Procedure on failure of electorate to appoint member.
Publication of names of Sadr and members.

12. The name of the Sadr and of every member appointed under section 7, 10 or 11 shall be published by the Provincial Government in the official Gazette.

13. The Provincial Government may remove from office—

Removal of Sadr and members.

(i) the Sadr or any member, if the Sadr or such member—

(a) is or becomes subject to any of the disqualifications specified in section 9;

(b) is convicted of any such offence or is subjected by a criminal court to any such order as implies moral turpitude which, in the opinion of the Provincial Government, unfits him to hold office;

(c) refuses to act or becomes incapable of acting or acts in a manner which the Provincial Government considers, after hearing any explanation that he may offer, to be prejudicial to the interest of wakfs;

(ii) any member who, without reasonable cause, fails during a continuous period of twelve months to attend any meeting of the Majlis.

CHAPTER III.

MEETINGS OF THE MAJLIS AND PROCEDURE AT MEETINGS.

14. (1) The Majlis shall have an office at Delhi and shall meet for the transaction of business at least once in every three months and as often as it is necessary to meet for the transaction of business.

Ordinary meetings of the Majlis.

(2) Every meeting of the Majlis shall be convened by the Sadr or by the Nazir under the direction of the Sadr and at least fourteen days notice of the meeting shall be given to the members.

(3) If there be no official business to be transacted at any quarterly meeting and if no notice of any business to be transacted at such meeting is received by the Sadr from any member at least ten days before the date appointed for the meeting, the Sadr shall, instead of calling the meeting, notify the fact to each member at least one week before the said date.

15. A special meeting of the Majlis shall be called by the Sadr on the receipt of a requisition signed in the case of the Sunni Majlis-e-Awakaf, Delhi, by not less than seven, or in the case of the Shia Majlis-e-Awakaf, Delhi, by not less than two members and specifying the business to be transacted at such meeting. If the Sadr fails to issue notices

Special meetings.
Majlis-e-Awakaf, Delhi, by not less than two members and specifying the business to be transacted at such meeting.

convening a meeting before the expiry of seven days from receipt of the requisition, or fails to convene the meeting before the expiry of twenty-one days from receipt of the requisition, the meeting may be called by the members who signed the requisition.

Quorum at meeting.

16. (1) Five members shall form the quorum for a meeting of the Sunni Majlis-e-Awakaf, Delhi, and three members shall form a quorum for a meeting of the Shia Majlis-e-Awakaf, Delhi.

(2) If, at the time appointed for a meeting or within one hour thereafter, a quorum is not present, the meeting shall stand adjourned. The Sadr shall fix a date for the adjourned meeting and fourteen days notice of such date shall be given to each member.

Sadr to preside at meeting.

17. The Sadr shall preside at every meeting of the Majlis and in his absence the members present shall elect one of their number to preside at the meeting.

Decision to be by majority of votes.

18. (1) Every matter coming before the Majlis shall be decided by a majority of votes of the members present and voting in the meeting.

(2) In the case of an equality of votes, the Sadr shall have a second or casting vote.

Minutes of proceedings.

19. (1) Minutes of proceedings of all meetings of the Majlis shall be entered in a book to be kept for the purpose and shall be signed by the Sadr.

(2) A copy of the minutes of the proceedings of every meeting shall be forthwith forwarded by the Sadr to the ^{State} Provincial Government or to such authority as the ^{State} Provincial Government may direct.

Appointment of committees and functions of such committees.

20. (1) The Majlis may appoint committees to assist it in the exercise of the powers or the performance of the duties conferred or imposed upon it by or under this Act, and may determine the functions and procedure of such committees.

(2) Any person who is not a member of the Majlis may be appointed to be a member of any such committee:

Provided that the number of such persons on any such committees shall not exceed one-third of the total number of members of the committee.

CHAPTER IV.

NAZIR-E-AWAKAF AND OTHER OFFICERS AND SERVANTS OF THE MAJLIS.

Appointment of Nazir.

21. The Majlis may appoint a person to be Nazir-e-Awakaf:

Provided that the first Nazir, who shall hold office for four years only but shall be eligible for re-appointment, shall be appointed by the Provincial Government.

22. (1) No person shall be eligible for appointment as Nazir unless he is in the case of the Sunni Majlis-e-Awakaf a Sunni Muslim, and in the case of the Shia Majlis-e-Awakaf a Shia Muslim.

(2) The salary, allowances and other conditions of service of the Nazir of the Sunni Majlis-e-Awakaf shall be such as may be fixed by the Majlis:

Provided that the salary, allowances and other conditions of service of the first Nazir shall be such as may be fixed by the Provincial Government.

(3) The Nazir of the Shia Majlis-e-Awakaf shall be an unpaid officer.

23. The Nazir and other officers and servants of the Majlis shall exercise such powers and perform such duties as may, from time to time, be conferred or imposed on them by the Majlis.

Powers and duties of Nazir and other officers and servants.

24. (1) The Majlis may, from time to time, determine the number, designations, grades and scales of salary and other conditions of service of its officers and servants.

Appointment of officers and servants.

(2) The power of appointing and promoting such officers and servants and of reducing them in rank or suspending or dismissing them and of dispensing with their services shall vest in—

(a) the Nazir, when the salary of the officer or servant is thirty rupees or less per mensem;

(b) the Sadr, when the salary of the officer or servant is fifty or less but more than thirty rupees per mensem; and

(c) the Majlis, when the salary of the officer or servant exceeds fifty rupees:

Provided that the Sadr shall not exercise any of his powers under this sub-section without first consulting the Nazir.

(3) The Nazir may grant leave to any officer or servant except himself.

(4) Any officer or servant considering himself aggrieved by any order passed by the Nazir or the Sadr under sub-section (2) or sub-section (3) may appeal to the Majlis and the Majlis may confirm, modify or set aside such order or pass such other order as it thinks fit.

CHAPTER V.

POWERS AND DUTIES OF THE MAJLIS.

25. (1) The general superintendence and control of all wakfs in the Province shall be vested in the Majlis. The Majlis shall do all things reasonable and necessary to ensure that wakfs are properly supervised and administered and that the income thereof is duly appropriated to the objects and in accordance with the purpose for which such wakfs were founded or for which they exist.

General powers and duties of the Majlis.

(2) All the powers and duties of the Committee ¹[(being now a Society registered under Act XXI of 1860)] appointed under the agreement dated the 24th day of November, 1862, made with Government by the managers of the Jama Masjid, Delhi, and of the Committee ¹[(being now a Society registered as aforesaid)] appointed under the

¹ Ins. by s. 2 of the Delhi Muslim Wakfs (Amendment) Act, 1944 (12 of 1944).

agreement dated the 1st day of May, 1877, made with Government by the trustees of the Fatehpuri Masjid, Delhi, and all the powers and duties of the registered society known as the Anjuman Moiyed-ul-Islam ^{State} [in respect of wakfs in the ~~Province~~] shall upon its establishment vest in the Majlis, and the said Committees and Anjuman shall cease to exercise those powers and perform those duties.

(3) Without prejudice to the generality of the provisions of subsection (1), and subject to the other provisions of this Act, the powers and duties of the Majlis shall be—

- (a) to prepare and maintain in the prescribed manner a complete record containing full information relating to the origin, nature, extent, income (if any), objects and beneficiaries of the different classes of wakfs in the ~~Province~~ ^{State} of Delhi;
- (b) to prepare and maintain a register containing true copies of all documents creating any wakf;
- ~~State~~ (c) to prepare and settle its budget and to furnish a copy thereof to the ~~Provincial~~ ^{State} Government or to such authority as the ~~Provincial~~ ^{State} Government may direct;
- (d) to take measures for the recovery of lost property of any wakf to which this Act applies;
- (e) to cause inspection to be made of the property or the office of any wakf, and, for that purpose, to authorise the Nazir or any of its members, officers or servants to enter such property or office;
- (f) from time to time, to call for information, reports, budgets, returns and other documents from mutawallis;
- (g) to give directions for the proper administration of a wakf in accordance with the law governing such wakf and the wishes of the wakif in so far as such wishes can be ascertained and are not repugnant to such law;
- (h) to direct the deposit of wakf money in the hands of a mutawalli in any bank approved by the Provincial Government;
- (i) to sanction the conversion of any property of a wakf into property of a different nature, if the Majlis is satisfied that such conversion is for the advantage of the wakf;
- (j) subject to the general supervision of the Provincial Government to control and administer the Wakf Fund;
- (k) to keep true and regular accounts of its own receipts and disbursements and submit the same for audit;
- ~~State~~ (l) to furnish to the ~~Provincial~~ ^{State} Government or to such officer as the ~~Provincial~~ ^{State} Government may appoint in this behalf

¹ Subs., by s. 2 of the Delhi Muslim Wakfs (Amendment) Act, 1944 (12 of 1944) for "in respect of the masjids and idgahs under its supervision."

any statement, report, return or other document and any information which the ^{Provincial} Provincial Government or, as the case may be, such officer may require to be furnished;

- (m) to institute, whenever it thinks fit, an enquiry relating to the administration of a wakf;
- (n) to direct the mutawalli of a wakf to institute in a court of law, within such time as may be fixed by the Majlis, any suit or proceeding which he is entitled to institute in accordance with the law for the time being in force in respect of the wakf and, on failure of the mutawalli to do so, to institute such suit or proceeding itself;
- (o) to defend, either on behalf of or in addition to the mutawalli, in any suit or proceeding instituted with respect to a wakf or any matter connected therewith, or, in cases where there is no mutawalli or the succession to the office of mutawalli is disputed, to defend any such suit or proceeding itself; and
- (p) to realise in the prescribed manner and subject to the prescribed conditions out of the income of any wakf the costs incurred by the Majlis in any suit or proceeding instituted by it under clause (n) or in defending any suit or proceeding under clause (o) in respect of such wakf.

(4) Save as provided in sub-section (2), where the supervision of a wakf is vested in any committee or association appointed by the wakif or by a competent Court or authority such committee or association shall continue to function under the general superintendence and control of the Majlis unless superseded by the Majlis under sub-section (5).

(5) The Majlis may supersede any committee or association referred to in sub-section (4) which in the opinion of the Majlis is not discharging its functions satisfactorily, and if it does so any decree or order of a Court or authority by which such committee or association was constituted shall cease to have effect, and the order of the Majlis shall be final and shall not be questioned in any Court.

26. (1) When any object of a wakf has ceased to exist or has, in the opinion of the Majlis, become impossible of achievement, the Majlis may, of its own motion, or on the application of any Muslim, after issuing notice in the prescribed manner to the mutawalli of such wakf and to such other person as may appear to the Majlis to be interested therein and after making such enquiry as it thinks fit, determine the object (which shall be similar or as nearly similar as practicable to the object which has ceased to exist or become impossible of achievement) to which the funds, property or income of the wakf, or so much of such fund, property or income as was previously expended on or applied to the object which has ceased to exist or become impossible of achievement, shall be applied.

Application of wakf funds, etc., where object ceases to exist or becomes impossible of achievement.

(2) The applicant or the mutawalli of, or any other person interested in, such wakf may, within sixty days of any order passed under

sub-section (1), make an application to the District Judge for varying, modifying, or setting aside such order; but, subject to the decision of the District Judge on any such application, the order of the Majlis shall be final and binding upon the applicant and every person interested in the wakf.

Power to contract and mode of execution of contracts.

27. (1) The Majlis may enter into such contracts as it may consider necessary or expedient for carrying out any of the purposes of this Act.

(2) Every contract made on behalf of the Majlis, the value or amount of which exceeds one hundred rupees, shall be in writing and shall be signed by the Nazir, and shall be countersigned by the Sadr and be sealed with the common seal of the Majlis. Contracts the value or amount of which is one hundred rupees or less shall be in writing and shall be signed by the Nazir.

(3) If any contract is executed on behalf of the Majlis otherwise than in conformity with the provisions of sub-section (2) it shall be voidable at the option of the Majlis.

Power of Majlis to settle schemes for proper administration of wakfs.

28. (1) The Majlis may, of its own motion, or on an application made to it in this behalf by two or more persons interested in any wakf,—

(a) settle a scheme for such wakf, after making such enquiry as it thinks fit and giving notice to the mutawalli of such wakf and to such other person as may appear to the Majlis to be interested therein;

(b) in like manner and subject to the like conditions, modify any scheme settled under this section or under any other law or substitute another scheme in its stead:

Provided that any scheme so settled, modified or substituted shall be in accordance with the law governing the wakf and shall not be contrary to the wishes of the wakf, so far as such wishes can be ascertained.

(2) A scheme settled, modified or substituted instead of another scheme under this section shall, unless otherwise ordered by the District Judge on an application, if any, made under sub-section (3), come into force on a day to be appointed by the Majlis in this behalf and shall be published in the official Gazette.

(3) The mutawalli of, or any other person interested in, such wakf may, within six months from the date of the publication in the official Gazette of the scheme so settled, modified or substituted instead of another scheme, as the case may be, make an application to the District Judge for varying, modifying, or setting aside the scheme; but, subject to the result of such application, the order of the Majlis under sub-sections (1) and (2) shall be final and binding upon the mutawalli of the wakf and upon every other person interested in such wakf.

(4) An order passed by the District Judge on any application made under sub-section (3) shall be final.

29. (1) Where a mutawalli refuses to pay or fails to pay any land-revenue, cess, rent, rates or taxes due to the Crown or to a local authority from a wakf, the Majlis may itself defray the charges from the Wakf Fund and may recover from the wakf property the amount so paid, and, if the refusal or failure of the mutawalli was in the opinion of the Majlis wilful, may recover from the mutawalli damages at the rate of twelve and one half per cent. of the amount so paid:

Power of Majlis to make certain payments on behalf of wakfs.

Provided that a mutawalli aggrieved by a decision of the Majlis to recover damages under this sub-section may apply to the District Judge to have the order annulled, and the order of the District Judge shall be final.

(2) The Majlis may pay out of the Wakf Fund land-revenue, cess, rent, rates or taxes due to the Crown or to a local authority from a wakf if the funds of the wakf are insufficient to defray such charges.

(3) The procedure provided in sub-section (4) of section 56 shall apply to the recovery by the Majlis of any sums which the Majlis is empowered by sub-section (1) to recover from a wakf or a mutawalli.

30. The Majlis may, with the previous sanction of the ~~Provincial~~ ^{State} Government, borrow money for the purpose of giving effect to the provisions of this Act of such amount and on such conditions as the ~~Provincial~~ ^{State} Government may determine.

Power of Majlis to borrow money.

31. (1) The Sunni Majlis-e-Awkaf for Sunni wakfs and the Shia Majlis-e-Awkaf for Shia wakfs shall prepare and maintain in such form as it thinks fit a register of all wakfs in the ~~Province~~ ^{State}.

Majlis to keep certain registers.

(2) Entries in the register may be made by the Majlis of its own motion or on application made by any Muslim after such enquiry as the Majlis thinks fit.

(3) Any Muslim may, on payment of such fee as may be fixed by the Majlis, inspect the register and obtain a copy of any extract thereof.

32. If any necessity arises for immediate action by the Majlis, and a meeting of the Majlis cannot be arranged in time to take such action, the Sadr may exercise any power that could be exercised by the Majlis, but the Sadr shall report in writing any action taken by him under this section to the Majlis at its next meeting together with his reasons for taking such action.

Exercise by Sadr of powers of Majlis.

CHAPTER VI.

JUDICIAL PROCEEDINGS.

33. In any of the following cases, namely,—

- (a) where any question arises as to whether any property is or is not property belonging to a wakf,
- (b) where a charge exists on any property for the performance of any religious, pious or charitable act recognised as such by Muslim Law and there is failure to perform such act,

Powers of Majlis to make applications to the District Judge in certain cases.

(c) where any question arises as to whether a wakf is created primarily for Shias or for Sunnis, the Majlis may apply to the District Judge for an order—

(i) determining, in the case referred to in clause (a), whether the property does or does not belong to a wakf, and, if it belongs to a wakf, the wakf to which it belongs;

(ii) directing, in the case referred to in clause (b), the person in possession of the property to perform such act or in default to pay to the Majlis the amount necessary for the performance by the Majlis, or any person appointed by the Majlis in this behalf, of the act for the performance of which the charge was created;

(iii) determining, in the case referred to in clause (c), whether the wakf is created primarily for Shias or for Sunnis.

Procedure at hearing of applications for determining whether any property is wakf property.

34. (1) When an application is made under clause (a) of section 33, the District Judge shall cause a special notice of the application to be served on the person in possession of the property and a general notice thereof to be published in the prescribed manner calling upon such person and all other persons having any claim to the property to file their respective claims before him within six months from the publication of the said general notice.

(2) If, within the period specified in sub-section (1),—

(a) no claim is filed by any of the persons referred to in the said sub-section, the District Judge shall make an order declaring that such property is wakf property and determining the wakf to which it belongs;

(b) any claim is filed by any such person, the District Judge shall proceed to determine whether the property is wakf property, and, if it is, the wakf to which it belongs.

(3) If the District Judge makes an order under clause (a) of sub-section (2) or determines under clause (b) of the said sub-section that the property belongs to any wakf, he shall make a further order directing the person in possession of the property to deliver possession thereof within a period to be specified in the order to the mutawalli of the wakf concerned.

(4) Notwithstanding anything to the contrary contained in this Act or in the Indian Limitation Act, 1908, or in any other law, every proceeding under this section shall, for the purposes of the said Indian Limitation Act, be deemed to be a suit instituted on the date on which the application referred to in sub-section (1) is made to the District Judge.

(5) In disposing of any application under this section to which clause (b) of sub-section (2) applies, the District Judge shall follow as nearly as possible the procedure applicable to the trial of suits.

35. Where the mutawalli of a wakf wilfully fails to discharge any of the duties imposed upon him under the wakf, the Majlis or, with the previous sanction of the Majlis or the ~~Provincial~~ ^{State} Government, any person interested in the wakf may make an application to the District Judge for an order—

Application to compel mutawalli to discharge obligations or for appointment of receiver.

(a) directing the mutawalli to discharge such obligation within a time to be specified in the order; or

(b) appointing the Nazir as receiver of the funds and property of the wakf if the mutawalli fails to carry out such direction within the time so specified.

36. (1, Where it is alleged that the mutawalli of a wakf—

Power of District Judge to remove mutawalli and make other orders.

(i) acts in a manner prejudicial to the interests of the wakf, or

(ii) persistently defaults in the payment of any amount payable under any law for the time being in force in respect of the property or income of the wakf or any other statutory charge on such property or income, or

(iii) persistently defaults in the payment of any sum payable to any beneficiary under the wakf or in discharging any other duty imposed upon him under the wakf, or

(iv) is guilty of breach of trust,

the Majlis or, with the previous sanction of the Majlis or of the ~~Provincial~~ ^{State} Government, any person interested in a wakf may institute a suit before the District Judge to obtain a decree—

(a) removing the mutawalli;

(b) appointing a new mutawalli;

(c) vesting any property in a mutawalli;

(d) directing accounts and enquiries; or

(e) granting such further or other relief as the nature of the case may require.

(2) The Majlis or, with the previous sanction of the Majlis or of the ~~Provincial~~ ^{State} Government, any person interested in the wakf may make an application to the District Judge for an order removing the mutawalli of any wakf, if such mutawalli—

(a) is convicted of any such offence or is subjected by a criminal Court to any such order as implies moral turpitude which in the opinion of the District Judge unfits him to hold office;

(b) refuses to act or becomes incapable of acting;

(c) applies for being adjudged or is adjudged an insolvent;

(d) fails without reasonable cause, the burden of proving which shall be upon him, to comply with any direction given under clause (h) or clause (n) of sub-section (3) of section

25, or with the provisions of sub-section (1) of section 43 or of sub-section (1) of section 44; or

- (e) persistently and wilfully fails without reasonable cause to comply with the provisions of section 45 or to furnish any statement, annual account, estimate, explanation or other document or information relating to the wakf of which he is the mutawalli which he is required or called upon to furnish under any provision of this Act.

Notice of certain suits to be given to the Majlis and addition of Majlis as party thereto.

37. (1) In every suit or proceeding in respect of any wakf or property belonging to a wakf the Court shall issue a notice of the institution thereof to the Majlis.

(2) The Majlis may apply to the Court in which the suit or proceeding referred to in sub-section (1) is pending, to be added, and shall thereupon be added, as a party thereto, and shall be entitled to conduct such suit or proceeding, if instituted by the mutawalli, or to defend such suit or proceeding, if instituted by any other person against the mutawalli.

(3) If the notice required by sub-section (1) to be issued to the Majlis in respect of any suit or proceeding is not issued, the decree or order passed in such suit or proceeding shall be voidable at the option of the Majlis.

Proceedings in case of a wakf property under the Land Acquisition Act, 1894.

38. (1) In the course of a proceeding under the Land Acquisition Act, 1894, the Collector, before making an award in respect of a wakf property shall issue a notice to the Majlis and shall stay further proceedings to enable it to plead as a party to the proceeding at any time within three months from the date of the receipt of the notice. I of 1894.

(2) Where the Majlis has reason to believe that any property under acquisition is a wakf property it may at any time before the award is made appear and plead as party to the proceedings.

(3) When the Majlis has appeared under the provisions of sub-section (2) no order shall be passed under section 31, or section 32 of the Land Acquisition Act, 1894, without giving opportunity to the Majlis I of 1894. to be heard.

(4) Any order passed under section 31 or section 32 of the Land Acquisition Act, 1894, without giving opportunity to the Majlis to be I of 1894. heard, shall be voidable at the option of the Majlis.

Notice of sales to be given to the Majlis.

39. (1) Before any wakf property is notified for sale in execution of a decree, or for the recovery of any revenue, cess, rate or tax due to the Crown or to a local authority, notice shall be given to the Majlis by the Court or Collector or other person under whose order the sale is notified.

(2) If the notice required by sub-section (1) to be issued to the Majlis in respect of any sale is not issued the sale shall be voidable at the option of the Majlis.

40. Where there is no mutawalli of a wakf or the mutawalli of a wakf refuses or neglects to act in the matter within a reasonable time, the Majlis may in its own name institute a suit or proceeding in Court against a stranger to the wakf or any other person for the recovery of any wakf property wrongfully possessed, alienated or leased, or to have any wakf property discharged of an encumbrance or obligation wrongfully created or to recover any money belonging to a wakf.

Power of Majlis to institute suits on failure of mutawalli to do so.

V of 1908.

41. No arrangement, compromise or adjustment in any suit or proceeding in respect of any wakf or property belonging to a wakf shall be recorded under the provisions of Rule 3 of Order XXIII of the Code of Civil Procedure, 1908, without the approval of the Majlis.

approval of Majlis required to compromise etc.

CHAPTER VII.

MUTAWALLIS AND THEIR DUTIES.

42. Every mutawalli shall carry out all directions which may, from time to time, be issued to him by the Majlis under any of the provisions of this Act.

Mutawalli to carry out orders of the Majlis.

43. (1) (a) Within six months from the date of the publication of the notification establishing the first Majlis the mutawalli of every wakf existing on the said date shall furnish to the Majlis a statement in the prescribed form containing the prescribed particulars in respect of the wakf of which he is the mutawalli.

Registration of wakfs.

(b) In the case of a wakf created after the date of the publication of the said notification, such statement shall be furnished to the Majlis by the mutawalli of such wakf within six months from the date on which the wakf is created.

X of 1908.

(2) Every such statement shall be verified by the mutawalli in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings, and shall be accompanied by a true copy of the deed, or instrument creating the wakf or, where there is no such deed or instrument, by a statement in the prescribed form setting forth the objects of the wakf and verified in like manner.

44. (1) The mutawalli of every wakf shall, before the fifteenth day of January in each year, prepare a budget of the estimated income and expenditure of such wakf for the next succeeding financial year and shall forthwith send a copy thereof to the Majlis.

Budget of wakfs and submission of such budgets to the Majlis.

(2) The Majlis may, within six weeks from the date on which it receives such copy, alter or modify the budget in such manner and to such extent as it thinks fit:

Provided that nothing in this sub-section shall be deemed to authorise the Majlis to alter or modify the budget unless it is inconsistent with the wishes of the wakif, so far as such wishes can be ascertained.

(3) If the Majlis alters or modifies any budget under sub-section (2), it shall forthwith send a copy of the budget as so altered or modified to the mutawalli of the wakf concerned, and the budget as so altered or modified shall be deemed to be the budget of the wakf.

(4) If the Majlis neglects or omits for two weeks after the expiration of the period mentioned in sub-section (2) to send to the mutawalli of the wakf concerned a copy of the budget altered or modified as aforesaid, the Majlis shall be deemed to have approved the budget without any alteration or modification.

(5) If the mutawalli fails to prepare and send a copy of the budget as required by sub-section (1) the Majlis shall prepare a budget for the wakf concerned and such budget shall be deemed to be the budget of that wakf for the year in question.

Duties of mutawallis to give assistance in enquiries, etc.

45. The mutawalli of every wakf shall offer every reasonable facility for the inspection of the documents and the property of such wakf and shall render every assistance in enquiries, when called upon to do so by the Majlis, any committee, the Sadr, the Nazir, or any other person or officer appointed by the Majlis to make such enquiries.

Mutawalli or other person to deliver possession of wakf property, etc., in certain cases as ordered by the Majlis.

46. (1) When the District Judge makes any order appointing a new mutawalli under clause (b) of sub-section (1) of section 36 or vesting any property in a mutawalli under clause (c) of the said sub-section the Majlis shall order the mutawalli removed from office or any person who may be in possession of any property or document belonging to the wakf concerned or in possession of any property to which the order under the said clause (c) relates to deliver, within such time as may be fixed by the Majlis, such property or document to the new mutawalli or to the mutawalli in whose favour the order under the said clause (c) has been made, and thereupon the mutawalli who has been so removed from office or the other person so ordered shall be bound to deliver such property or document as directed by the Majlis.

(2) If any person ordered under sub-section (1) to deliver any property or document of a wakf fails to do so within the time fixed by the Majlis, the Majlis may make an application to the District Judge for the recovery of such property or document.

CHAPTER VIII.

AUDIT AND RECOVERY OF IRREGULAR EXPENSES.

Appointment of auditor and audit of accounts of the Majlis.

47. (1) The accounts of the Majlis shall be audited and examined every year by such auditor, as may from time to time be appointed by the Provincial Government.

(2) For the purposes of any such audit and examination of accounts the auditor may, by a demand in writing, require from the Majlis or any member or servant of the Majlis the production before him of any document and papers which he deems necessary, and may require any person holding or accountable for any such books, deeds, vouchers, documents or papers to appear before him at any such audit and examination, and to answer all questions which may be put to him with respect to the same or to prepare and submit any further statement which such auditor may consider necessary.

48. (1) Within thirty days after the audit and examination have been completed the auditor shall submit a report to the Majlis upon each account audited and examined, and shall forward copies of his reports to the ~~Provincial~~ ^{State} Government and to the Majlis.

Submission
of auditor's
report to the
Majlis and
the
Provincial
Government.

(2) The report of the auditor shall among other matters specify all items of expenditure which in his opinion are illegal, irregular or improper, all cases of failure to recover money or property due to the Majlis, all instances of loss or wasteful expenditure of money or property due to negligence or misconduct and all instances in which any money or property has been devoted to any purpose not authorised by this Act.

(3) The Majlis shall cause the report and abstracts of each account to be published in at least one English and one Urdu newspaper printed and published in the ~~Province~~ ^{State} of Delhi.

49. The Majlis in general meeting shall consider the reports of the auditor and satisfy itself that no expenditure shown therein has been incurred otherwise than in accordance with the provisions of this Act and shall pass such orders as are in its opinion necessary and proper to rectify any illegal, unauthorised or improper expenditure, and may pass such further orders upon the reports as it deems proper.

Majlis to
consider
auditor's
report.

50. (1) The expenses incurred in the audit and examination of the accounts of the Majlis shall be paid out of the Wakf Fund.

Payment of
expenses.

(2) If payment of the expenses referred to in sub-section (1) is not made within three months from the date of the submission of a report as described in section 48, the ~~Provincial~~ ^{State} Government may, on application to it being made within six months from such date by the auditor, recover the amount due as if it were an arrear of land-revenue.

51. (1) The accounts of every wakf shall be audited and examined annually by a qualified accountant appointed as auditor by the Majlis.

Audit of
accounts of
wakfs.

(2) The auditor may, by written notice, require the production before him of any document or the attendance before him of any person responsible for the preparation of the accounts, to enable the auditor to obtain such information as he may consider necessary for the proper conduct of audit.

(3) After completing the audit, the auditor shall submit a report to the Majlis:

Provided that the auditor may submit an interim report at any time he thinks fit.

(4) The report of the auditor shall include a statement of—

(a) any payment which appears to him to be contrary to law;

(b) the amount of any deficiency or loss which appears to have been incurred by the negligence or misconduct of the mutawalli; and

(c) the amount of any sum which ought to have been but is not brought into account by the mutawalli.

(5) After considering such report, the Majlis may—

(a) order that any payment referred to in clause (a) of sub-section (4) shall be allowed or that no further action shall be taken as regards any amount referred to in clause (b) or (c) of the said sub-section, or

(b) serve a notice on the mutawalli concerned requiring him to show cause within one month from the date of the service of such notice why such payment should not be surcharged or such amount should not be charged against him.

(6) After considering such cause as may be shown by the mutawalli and affording him a reasonable opportunity of being heard, the Majlis may surcharge such payment or charge the amount of any loss or deficiency against him and shall, in every case, certify the amount due from him.

(7) The cost of the audit of the accounts of a wakf shall be paid from the Wakf Fund.

Certified
amount
recoverable
as arrear of
land
-revenue.

52. (1) Every amount certified under sub-section (6) of section 51 as due from any mutawalli shall, if not paid within sixty days next after the date of the certification thereof, be recoverable in the manner provided in sub-section (4) of section 56.

(2) The Majlis shall pay all certified amounts received or recovered by it to the mutawalli of the wakf concerned.

Appeal
against order
of surcharge
or charge.

53. (1) A mutawalli aggrieved by any order of surcharge or charge made against him under sub-section (6) of section 51 may, within thirty days of such order, appeal to the prescribed authority which may, after making such enquiry as it considers proper, pass such order as it thinks fit.

(2) Notwithstanding anything to the contrary contained in sub-section (1) of section 52, pending the disposal of such appeal, all proceedings on the certificate shall be stayed.

Special
provisions as
to audit in
the case of
the Shia
Majlis and
Shia wakfs.

54. The provisions of this Chapter shall not apply to the Shia Majlis-e-Awakaf or to Shia wakfs, but the Provincial Government may at any time order the accounts of the Shia Majlis-e-Awakaf to be audited and the expenses incurred in such audit shall be payable in such manner as the Provincial Government may direct, and the Shia Majlis-e-Awakaf shall have the accounts of every Shia wakf examined annually by two persons appointed for the purpose by the Majlis.

CHAPTER IX.

THE WAKF FUND.

Creation of
Wakf Fund.

55. (1) There shall be formed a fund to be called the Wakf Fund; and there shall be placed to the credit thereof—

(a) all sums received by the Majlis as donations and grants;

(b) all sums received as fee under section 56;

- (c) all receipts in respect of fees for inspection and supplying copies of any documents;
- (d) all sums received or recovered by the Majlis as costs awarded to the Majlis in any suit or proceeding; and
- (e) all sums received or recovered by the Majlis on any other account except certified sums received or recovered by it under section 52.

(2) The Wakf Fund shall be vested in the Majlis and the balance standing to the credit of the Fund shall be kept in such custody as the Provincial Government may, from time to time, direct.

of 1913] 56. (1) For the purpose of defraying the expenses incurred or to be incurred in the administration of this Act, the mutawalli of every wakf other than a wakf referred to in section 3 of the Mussalman Wakf Validating Act, 1913, or a wakf the annual income of which is less than five hundred rupees shall in each financial year pay to the Majlis such fee, not exceeding six and a quarter per centum of its net income in the last preceding financial year, as the Majlis may, from time to time, with the previous sanction of the Provincial Government determine.

Fee payable
by Wakfs to
the Wakf
Fund.

Explanation.—In this sub-section the expression “net income” means the total income realised by the mutawalli from all sources after deducting any amount payable as revenue, rent, taxes, local or other cesses and collection charges not exceeding three per cent. of the amount collected, but does not include offerings intended explicitly for the mutawalli personally.

(2) (a) The fee referred to in sub-section (1) shall be assessed by the prescribed authority in the prescribed manner.

(b) A mutawalli, aggrieved by an order of assessment made by the prescribed authority under clause (a), may, within one month of the date of the receipt of the said order, appeal to such authority as may be prescribed, and such authority may, by order, set aside or vary such assessment and such order shall be final.

(3) Such fee shall be payable in the prescribed manner in four equal instalments on such dates as may, from time to time, be fixed by the Majlis.

(4) If any instalment of such fee is not paid on or before the date fixed by the Majlis under sub-section (3) for the payment of such instalment, the Majlis may forward to the Collector a statement specifying the amount due, and the Collector on receipt of such statement shall proceed to recover from the person responsible for paying the same the amount specified in the statement as if it were an arrear of land-revenue.

(5) The Majlis may reduce any portion of the fee payable by the mutawalli of any wakf.

Objects to which Wakf Fund may be applied.

57. The Wakf Fund shall be applicable to the following objects, and in the following order:—

- (a) to the repayment of debts incurred by the Majlis for the purposes of this Act;
- (b) to the payment of the salaries and allowances of the Nazir and of the establishments employed by the Majlis for the purposes of this Act;
- (c) to the expenses incurred in the assessment and recovery of the fee mentioned in section 56;
- (d) to the payment of the cost of audit of the Wakf Fund and of the cost of audit of the accounts of any wakf made under section 51;
- (e) to the expenses of any suit or proceeding to which the Majlis is a party;
- (f) to any object which may be declared by the Majlis at a meeting specially convened for the purpose, by a resolution in favour of which not less than two-thirds of the members present at such meeting shall have voted, to be an object to which the Wakf Fund may be applicable in consonance with the Muhammadan Law;
- (g) to payments for the maintenance or repair of wakfs whose income is insufficient for the purpose;
- (h) to payments of arrears of land-revenue, cess, rent, rates or taxes due to the ~~Crown~~ ^{Government} or a local authority from a wakf, where the mutawalli refuses or fails to pay; and
- (i) to the payment of any other expense incurred by the Majlis in carrying out the provisions of this Act.

CHAPTER X.

MISCELLANEOUS.

Bar to transfer of immovable property of wakf.

58. (1) Except as provided in sub-section (2), no transfer made after the commencement of this Act by a mutawalli of any immovable property of a wakf by way of sale, mortgage, gift or exchange, or by way of lease for a term exceeding three years shall be valid unless made with the previous sanction of the Majlis.

(2) Where any such transfer is made under an express power conferred by the wakf deed the previous sanction of the Majlis shall not be necessary, but a notice of the proposed transfer in such form and containing such particulars as may be prescribed shall be sent by the mutawalli to the Majlis one month before the transfer is made.

Power of mutawalli to apply to Majlis for direction.

59. The mutawalli of a wakf may apply by petition to the Majlis for the opinion, advice or direction of the Majlis on any question affecting the management or administration of the property of such wakf and the Majlis shall give its opinion, advice or direction, as the case may be, thereon.

60. Every order passed by the District Judge under this Act shall have the force of a decree and shall, unless otherwise provided in this Act, be appealable to the High Court.

Orders of District Judge to have the force of and be appealable as decrees.

61. The Sadr, the Nazir and every auditor appointed under section 47 or 51 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Sadr, etc., to be public servants.

XLV of 1860.

62. The Majlis may, if it is satisfied that there is sufficient reason for so doing, from time to time, extend the time within which any act or thing is required or ordered to be done under any of the provisions of this Act.

Power to extend time.

63. (1) The Majlis may grant copies of its proceedings and records and any other document in its possession on payment of such fees and subject to such condition as may, from time to time, be determined by the Majlis.

Power to grant copies and certify such copies.

I of 1872. (2) Such copies may be certified in the manner provided in section 76 of the Indian Evidence Act, 1872.

64. (1) No act of the Majlis or of a committee shall be deemed to be invalid by reason of the existence of a vacancy in the Majlis or such committee.

Presumption and savings.

(2) Accidental omission to serve notice of a meeting of the Majlis or of a committee on any member of the Majlis or such committee, as the case may be, shall not affect the validity of any such meeting.

(3) No act, order or direction of the Majlis shall be deemed to be invalid by reason of any irregularity in the constitution of the Majlis and no order or decision or direction of the Majlis or of the Sadr shall be reversed or substantially varied, nor shall any proceeding heard by the Majlis or by the Sadr be remanded, by the District Judge before whom, or any Court in which, an application is made, a suit instituted or an appeal preferred to reverse or vary such order, decision or direction, on account of any mis-joinder or non-joinder of parties or causes of action, or any error, defect or irregularity in the proceedings before the Majlis or the Sadr not affecting the merits of the case or the jurisdiction of the Majlis or the Sadr.

65. Save as otherwise provided in this Act, no suit shall be brought in any Civil Court to set aside or modify any order made under this Act, and no suit shall lie against the Majlis, the Sadr or any other member or the Nazir for anything in good faith done or purporting to be done under this Act.

Bar of suits.

66. No suit shall be brought against the Majlis or the Sadr or any other member or the Nazir or any of the officers or servants of the Majlis or any person acting under their direction or under the direction of any of them for anything done or purporting to be done under this Act, until the expiration of two months next after notice in writing has been delivered or left at the office of the Majlis and also (if the suit is intended to be brought against the Sadr or any other member or the

No action to be brought against the Majlis or the Sadr, etc., until after notice of cause of action.

Nazir or any of the officers or the servants of the Majlis or any person acting under their direction or under the direction of any of them) at the place of abode of the person against whom such suit is intended to be brought, stating the cause of action and the name and place of abode of the person who intends to bring the suit.

Court fee
leviable
under this
Act.

67. Notwithstanding anything contained in the Court-fees Act, 1870, VI or any other Act, in its application to the Province of Delhi, the fee payable on any application filed before the District Judge under this Act shall be such as may be prescribed.

Provisions to
have effect
notwith-
standing
any other
law.

68. The provisions of this Act shall have effect notwithstanding anything contained in any other law or anything having the force of law; and anything in any such law or anything having the force of law, which is inconsistent with any of the provisions of this Act, shall, to the extent of such inconsistency, be deemed to be of no effect.

Power of the
Provincial
Government
to make
rules.

69. (1) The ^{State} Provincial Government may, after previous publication, make rules not inconsistent with this Act, for carrying out the purposes of this Act.

(2) In particular and ^{State} without prejudice to the generality of the foregoing power, the ^{State} Provincial Government may make rules with respect to all or any of the following matters:—

(a) the conditions and restrictions subject to which the Majlis may transfer any property under sub-section (2) of section 5;

(b) the manner in which members shall be elected under clauses (b), (c), (d) and (e) of sub-section (1) and clauses (b), (c) and (d) of sub-section (2) of section 7 and under section 10;

(c) the manner in which the record referred to in clause (a) of sub-section (3) of section 25 shall be prepared and maintained;

(d) the manner in which and the conditions subject to which the Majlis may realise the costs referred to in clause (p) of sub-section (3) of section 25;

(e) the manner in which notices under sub-section (1) of section 26 shall be issued;

(f) the manner in which general notices under sub-section (1) of section 34 shall be published;

(g) the form of the statements referred to in sub-sections (1) and (2) of section 43 and the particulars to be contained in the statement referred to in the said sub-section (1);

(h) the authority to whom a mutawalli may appeal under sub-section (1) of section 53;

(i) the manner in which fees under section 56 shall be assessed and paid, the authority by whom such assessment shall

be made and the authority to whom appeal from orders of assessment shall lie;

(j) the form of and the particulars to be contained in the notice referred to in sub-section (2) of section 58; and

(k) the fee payable on any application or other document under section 67.

70. (1) The Majlis may make bye-laws not inconsistent with this Act or the rules made thereunder for any matter necessary for carrying into effect the objects of this Act. Power of the Majlis to make bye-laws.

(2) In particular and without prejudice to the generality of the foregoing power the Majlis may make bye-laws with respect to—

(a) the preservation of order and the conduct of proceedings at meetings of the Majlis;

(b) the functions and procedure of committees;

(c) the fee to be levied on applications under this Act before it or any of its committees or before the Sadr or the Nazir or any of the officers or servants of the Majlis, and on applications for copies of proceedings or other records of the Majlis and the form of and manner of making such applications;

(d) the fee to be paid for inspecting the register of wakfs;

(e) the form of the register of wakfs to be prepared and maintained by the Majlis;

(f) the books and accounts to be kept in the office of wakfs;

(g) the accounts, reports and returns to be submitted by trustees of wakfs;

(h) the manner in which the accounts of wakfs shall be audited and published, the time and place of such audit, the forms and contents of the auditor's reports and the scale of remuneration to be paid to auditors;

(i) the custody and investment of the fund of any wakf;

(j) the number, designation, grades, salaries, allowances and other conditions of service, including the powers and duties, of the officers and servants of the Majlis;

(k) the allocation of duties to the Sadr and members of the Majlis;

(l) the security, if any, to be furnished by officers and servants of the Majlis;

(m) the persons by whom receipts may be granted for money received;

(n) the custody of the common seal;

- (o) the manner in which the decisions of the Majlis may be ascertained otherwise than at meetings;
- (p) the form of and particulars to be contained in the budget referred to in section 44; and
- (q) the publication of the notices, decisions and orders of the Majlis.

(3) Such bye-laws shall be made after previous publication and shall not take effect until they are approved and confirmed by the Provincial Government.

Provisions to facilitate the bringing into force of this Act.

71. (1) Notwithstanding anything contained in section 22 of the General Clauses Act, 1897, but otherwise without prejudice to the provisions of that section, the Provincial Government may, immediately upon the passing of this Act, make the appointment referred to in the proviso to section 21 of this Act, and such appointment shall take effect immediately. X of 188

(2) It shall be the duty of the Nazir when so appointed to carry out or assist in carrying out under the directions and control of the Provincial Government any steps necessary for or preliminary to the bringing into force of the provisions of this Act.

(3) If any difficulty arises in the first constitution of the Majlis or otherwise in bringing this Act into force, the Provincial Government may by order direct any action necessary to overcome such difficulty.

Power to summon witnesses and produce documents.

72. For the purposes of any enquiry under this Act, the Majlis or the Nazir or any person authorized by the Majlis in this behalf shall have the power to summon and enforce the attendance of witnesses including the parties interested and compel the production of documents by the same means, and, so far as may be, in the same manner as is provided in the case of a Civil Court in the Code of Civil Procedure, 1908.

V of 1908.

Penalty.

73. (1) If a mutawalli fails—

- (a) to apply for registration of a wakf under section 43,
- (b) to furnish statements of particulars or of accounts or returns as required by this Act,
- (c) to supply information or particulars as required by the Majlis or the Nazir or a person authorized by the Majlis in this behalf,
- (d) to allow inspection of wakf properties, accounts, or records, or deeds and documents relating thereto, or to assist inquiries and investigations if called upon to do so by the Majlis or the Nazir or a person authorized by the Majlis,
- (e) to deliver possession of any wakf property if ordered by the Majlis or the Court,

¹ Subs. 72 and 73 ins by s. 4 of the Delhi Muslim Wakfs (Amendment) Act, 1947 (13 of 1947).

1943: Act XXIII.] *War Injuries (Compensation Insurance).*

- (f) to carry out the directions of the Majlis or the Nazir or a person authorized by the Majlis or the Nazir,
- (g) to pay the fee payable under section 56,
- (h) to discharge any public dues, or
- (i) to do any other act which he is lawfully required to do by or under this Act,

he shall, unless he satisfies the Court that there was reasonable cause for his failure, be punishable with fine which may extend to Rs. 250.

(2) If a mutawalli furnishes any statement, return or information referred to in clause (b) or clause (c) of sub-section (1) which he knows or has reason to believe to be false, misleading or untrue in any material particular he shall be punishable with fine which may extend to Rs. 250.

(3) In case of a second conviction under sub-section (1) or sub-section (2) the amount of fine which the court may impose may extend to Rs. 500, and in case of a third conviction the amount of fine may extend to Rs. 1,000 and the Mutawalli shall also be removed.

(4) The Mutawalli shall be personally liable for the payment of a fine imposed under this section.

(5) All fines imposed under this section shall be credited to the Wakf Fund].

THE WAR INJURIES (COMPENSATION INSURANCE) ACT, 1943.

¹Act No. XXIII of 1943.

[2nd September, 1943.]

An act to impose on employers a liability to pay compensation to workmen sustaining war injuries and to provide for the insurance of employers against such liability .

WHEREAS it is expedient to impose on employers a liability to pay compensation to workmen sustaining war injuries and to provide for the insurance of employers against such liability :

It is hereby enacted as follows:—

1. (1) This Act may be called the War Injuries (Compensation Insurance) Act, 1943.

Short title,
extent and
commence-
ment.

¹ For Statement of Objects and Reasons, see Gazette of India, 1943, Pt. V, p. 97 and for Report of Select Committee, see *ibid*, p. 127.

(2) It extends to the whole of India except the territories to which immediately before the 1st November 1956, were comprised in part B State.

ment may, by notification in the official Gazette, appoint.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

- (a) “adult” and “minor” have the meanings assigned to those expressions in the Workmen’s Compensation Act, 1923; VIII of 1923.
- (b) “employer” includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means the latter person while the workman is working for that other person;
- (c) “the Fund” means the War Injuries Compensation Insurance Fund constituted under section 10;
- (d) “gainfully occupied person” and “war injury” have the meanings assigned to those expressions in the War Injuries Ordinance, 1941. VII of 1941.
- (e) “partial disablement” means, where the disablement is of a temporary nature such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time the injury was sustained, and where the disablement is of a permanent nature, such disablement as reduces his earning capacity in any employment which he was capable of undertaking at that time:

Provided that every injury specified in items 2 to 9 of the “[First Schedule]” shall be deemed to result in permanent partial disablement;

- (f) “prescribed” means prescribed by rules made under section 20;

¹ Subs. by the A. O. 1948 for “the whole of British India”.

² This Act has been applied to—

- (1) the Darjeeling District with effect from 16th November 1943, see the late Bengal Government notification No. 50-Com. (C. D.), dated 11th 1944 January,
- (2) the partially excluded areas of Orissa Province see Orissa Government notification No. 26750-3/42-Com., dated 29th November 1943;
- (3) the partially excluded areas in the Province of Madras, see Madras Government notification No. 43, Fort St. George Gazette, Pt. I, dated 16th May 1944, p. 389.

³ The 16th November 1943, see Gazette of India, 1943, Pt. I, p. 1258.

⁴ Subs. by s. 2 of the War Injuries (Compensation Insurance) Amendment Ordinance, 1944 (54 of 1944), for “Schedule”.

1[(ff) "termination of the present hostilities" means such date as the Central Government may, by notification in the official Gazette, declare to be the date on which the said hostilities terminated;]

(g) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time the injury was sustained:

Provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from an injury specified in item 1 of the ²[First Schedule] or from any combination of injuries specified in items 2 to 9 of the ²[First Schedule] where the aggregate percentage of disability as specified in that Schedule against those injuries amounts to one hundred per cent.;

(h) the "Scheme" means the War Injuries Compensation Insurance Scheme referred to in sub-section (1) of section 7;

VIII of 1923. (i) "wages" means wages as defined in the Workmen's Compensation Act, 1923, and "monthly wages" has the meaning assigned to that expression by section 5 of the Workmen's Compensation Act, 1923, and shall be calculated for the purposes of this Act in the manner laid down in that section;

VI.I of 1923.

(j) "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employers' trade or business) who is employed in any of the employments specified in section 6.

VII of 1941. 3. (1) There shall, subject to such conditions as may be specified in the Scheme, be payable by an employer, in respect of a war injury sustained by a gainfully occupied person who is a workman to whom this Act applies, compensation, in addition to any relief provided under the War Injuries Ordinance, 1941, of the amount and kind provided by section 5.

Compensation payable under the Act by whom and how payable.

Provided that where an employer has taken out a policy of insurance as required by sub-section (1) of section 9 and has made all payments by way of premium thereon which are subsequently due from him in accordance with the provisions of the Scheme, or where by the provisions ³[of sub-section (1) of section 9 or] of sub-section (2) of section 12 the employer is not required to insure, the Central Government shall assume and discharge on behalf of the employer the employer's liability to pay compensation under this sub-section.

(2) The compensation payable under this Act shall be payable in accordance with the provisions made in this behalf contained in the Scheme.

1 Ins. by s. 2 of the War Injuries (Compensation Insurance) Amendment Ordinance, 1945 (41 of 1945).

2 Subs. by s. 2 of the War Injuries (Compensation Insurance) Amendment Ordinance 1944 (54 of 1944), for "Schedule".

3 Ins. by s. 3, *ibid*.

(3) This section shall be binding on the ~~Crown~~ Government.

Limitation
on right to
receive com-
pensation
otherwise
than under
this Act and
Ordinance.
VII of 1941.

4. Where any person has a right apart from the provisions of this Act and of the War Injuries Ordinance, 1941, to receive compensation (whether in the form of gratuity, pension, compassionate payment or otherwise) or damages from an employer in respect of a war injury in respect of which compensation is payable under this Act, the right shall extend only to so much of such compensation or damages as exceeds the amount of compensation payable under this Act. VII of 1941.

Amount of
compen-
sation.

5. (1) The compensation payable under this Act shall be as follows, namely:—

(a) where death results from the injury—

(i) in the case of an adult—the amount payable in a like case under the Workmen's Compensation Act, 1923, reduced by seven hundred and twenty rupees, VIII of 1923, and

(ii) in the case of a minor—two hundred rupees;

(b) where permanent total disablement results from the injury—

(i) in the case of an adult—the amount payable in a like case under the Workmen's Compensation Act, 1923, VIII of 1923, reduced by one thousand and eight rupees, and

(ii) in the case of a minor—the monthly payment payable in a like case to an adult under the Scheme made under the War Injuries Ordinance, 1941, for so long as he remains a minor, and thereafter as in the foregoing sub-clause; VII of 1941.

(c) where permanent partial disablement results from the injury—

(i) in the case of an injury specified in the ¹[First Schedule]—such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of disablement;

(ii) in the case of an injury not specified in the ¹[First Schedule]—the percentage of such compensation specified in the ¹[First Schedule] for a disablement held by a competent medical authority acting under the Scheme made under the War Injuries Ordinance, 1941, to be of corresponding degree; VII of 1941.

(iii) where more injuries than one are sustained—the aggregate of the compensation payable in respect of those injuries, so however as not to exceed in any case the compensation which would have been payable if permanent total disability had resulted from the injuries;

¹ Subs. for "Schedule" by s. 4 of the War Injuries Compensation Insurance) Amendment Ordinance, 1944 (54 of 1944).

(d) where temporary disablement, whether total or partial, results from the injury—

VIII of 1923. (i) in the case of an adult—the half-monthly payments payable in a like case under the Workmen's Compensation Act, 1923, reduced in each case for so long as he receives any payment under the Scheme made under the War Injuries Ordinance, 1941, by seven rupees, and

VII of 1941. (ii) in the case of a minor—the half-monthly payments payable in a like case under the Workmen's Compensation Act, 1923, for so long as he remains a minor, and thereafter as in the foregoing sub-clause.

VIII of 1923.

(2) Where the monthly wages of a workman are more than three hundred rupees, the compensation payable under this Act shall be the amount payable under the provisions of sub-section (1) in the case of a workman whose monthly wages are more than two hundred rupees.

6. The workmen to whom this Act applies are—

Workmen to whom the Act applies.

XI of 1941. (a) workmen employed in any employment or class of employment to which the Essential Services (Maintenance) Ordinance, 1941, has been declared under section 3 of that Ordinance to apply, whether such declaration is or is not subsequently revoked;

XXV of 1934. (b) workmen employed in any factory as defined in clause (j) of section 2 of the Factories Act, 1934;

IV of 1923. (c) workmen employed in any mine within the meaning of the Indian Mines Act, 1923;

(d) workmen employed in any major port;

(e) workmen employed on any estate which is maintained for the purpose of growing cinchona, coffee, rubber or tea, and on which on any one day in the preceding twelve months twenty-five or more persons have been employed as workmen;

(f) workmen employed in any employment specified in this behalf by the Central Government by notification in the official Gazette.

7. (1) The Central Government shall, by notification in the official Gazette, put into operation a scheme to be called the War Injuries Compensation Insurance Scheme whereby provision is made for all matters necessary to give effect to the purposes of this Act and whereby the Central Government undertakes, in relation to employers of workmen to whom this Act applies, the liabilities of insuring such employers against liabilities incurred by them to workmen under this Act and the Scheme.

¹ See Gazette of India, 1943, Pt. I, p. 1359.

(2) The Scheme shall secure that any liability of the Central Government as insurer under the Scheme is determined by a policy of insurance issued in the prescribed form by a person acting on behalf of the Central Government.

(3) The Scheme may provide that it shall come into operation or shall be deemed to have come into operation on such date as may be specified therein.

(4) The Scheme may be amended at any time by the Central Government.

(5) Without prejudice to the generality of the provisions of subsection (1), the Scheme may—

- (a) make provisions regulating the payment of the compensation payable under this Act and the Scheme, including provision for punishment by fine not exceeding one thousand rupees for the contravention of any requirement of the Scheme;
- (b) make provisions specifying the persons to whom and the proportions and manner in which payments under this Act shall be made;
- (c) specify conditions or circumstances which will disentitle a workman to the compensation payable under this Act, and make it an express or implied condition of any policy of insurance issued under the Scheme that the payment of compensation in defiance of such specification is not covered by the policy;
- (d) specify the conditions or circumstances under which the compensation payable to a workman may be withheld, cancelled, reduced or reviewed if the award made under the Scheme made under the War Injuries Ordinance, 1941, is withheld, cancelled, reduced or reviewed;
- (e) provide for cases in which an employer has of his own accord undertaken a part or the whole of the liability imposed by this Act;
- (f) provide for the final assessment of the total premium due on a policy of insurance under the Scheme ¹[either as the equivalent of all advance payments of premium already made by an employer, or as a percentage of the total wages bills of an employer for the periods with reference to which the amount of any advance payments made by him was fixed or] as a percentage of the total wages bill of an employer for a period of not less than twelve or more than fifteen months immediately preceding the termination of the present hostilities, and for the assessment of the total premium due on a policy which has ceased to

¹ Ins. by s. 5 of the War Injuries (Compensation Insurance) Amendment Ordinance 1944 (54 of 1944).

be in force before the termination of the present hostilities owing to the employer having gone out of business;

(g) provide for the recovery from an employer of the total premium due on a policy of insurance including provision for its recovery by periodic advance payments of an amount based on a percentage of his total wages bill for any prescribed period, the separate funding of the payments so made by each employer, and the eventual adjustment of the total premium as finally assessed against the total of such periodic payments:

¹[Provided that, where the amount of the periodic payment based on the total wages bill of the prescribed period is less than eight rupees, it shall be increased to eight rupees:]

Provided ¹[further] that the first of such periodic payments shall ¹[subject to the aforesaid minimum of eight rupees] be an amount representing not more than four annas per hundred rupees of the wages bill for the period by reference to which the amount of the payment is fixed:

Provided further that such periodic payments shall not be more frequent than once in each quarter of a year:

Provided further that the rate of any periodic payment after the first shall ¹[subject to the aforesaid minimum of eight rupees] not be higher than the rate estimated to raise the amount in the Fund after repayment of the advances, if any, paid into the Fund by the Central Government under sub-section (2) of section 11, to a sum of rupees fifteen lakhs.

8. The Central Government may employ or authorise the employment of any person or firm to act as its agents for any of the purposes of this Act, and may pay to persons or firms so employed such remuneration as the Central Government thinks fit. Employment of agents by the Central Government.

9. (1) Every employer of workmen to whom this Act applies or is subsequently made applicable ²[except an employer whose total wages bill for any quarter after the commencement of this Act has never exceeded fifteen hundred rupees] shall, before such date as may be prescribed, or before the expiry of such period as may be prescribed after his having first become such an employer, take out a policy of insurance issued in accordance with the Scheme, whereby he is insured until the termination of the present hostilities or until the date, if any, prior to the termination of the present hostilities at which he ceases to be an employer to whom this section applies, against all liabilities imposed on him by this Act. Compulsory insurance.

(2) Whoever contravenes the provisions of sub-section (1) or, having taken out a policy of insurance as required by that sub-section, fails to make any payment by way of premium thereon which is subsequent-

¹ Ins. by s. 5 of the War Injuries (Compensation Insurance) Amendment Ordinance 1944 (54 of 1944).

² Ins. by s. 6, *ibid.*

ly due from him in accordance with the provisions of the Scheme shall be punishable with fine which may extend to one thousand rupees and shall also be punishable with a further fine which may extend to five hundred rupees for every day after having been so convicted on which the contravention or failure continues.

(3) This section shall not bind the ~~Crown~~ ^{Government} nor, unless the Central Government by notification in the official Gazette otherwise orders, any ~~Federal~~ Railway administrative

Prohibition
of certain
insurance
business.

territories

which this
extends

10. (1) After the date on which the Scheme is put into operation no person shall, except as a person authorised by the Central Government as its agent to issue policies in pursuance of the Scheme, carry on the business of insuring employers in ^{the} ~~the~~ ~~Provinces~~ against the liabilities for insurance against which the Scheme provides.

(2) Nothing in sub-section (1) applies to any policy of insurance entered into before the date on which the Scheme is put into operation and current after that date or to any policy of insurance covering liabilities undertaken in excess of the liabilities imposed by this Act.

(3) Whoever contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first on which the contravention continues.

War Injuries
Compensation
Insurance
Fund.

Part
of

11. (1) The Central Government shall establish a fund for the purposes of this Act to be called the War Injuries Compensation Insurance Fund into which shall be paid all sums received by the Central Government by way of insurance premiums under the Scheme or by way of payments made on composition of offences under section 17 ² or any provision of law corresponding thereto in force ~~in an Indian State or in the French Establishments in India~~ ^{in India} (or in the territories (hereinafter referred to as Administered Areas) set out in the Second Schedule) or by way of expenses or compensation awarded by a Court under section 545 of the Code of Criminal Procedure, 1898, out of any fine imposed under this Act, or by way of penalties imposed under the Scheme, and out of which shall be paid all sums required for the discharge by the Central Government of any of its liabilities under this Act or the Scheme, or for the payment by the Central Government of the remuneration and expenses of agents employed for the purposes of the Scheme, or for the payment by the Central Government of the costs of administering the Scheme:

Provided that no payment from the Fund shall be made in discharge of any liability of the ~~Crown~~ ^{Govt} to pay compensation to workmen employed by it.

(2) If at any time the sum standing to the credit of the Fund is less than the sum for the time being necessary for the adequate dis-

1 Subs. by the A.O. 1948 for "British India."

2 Ins. by s. 7 of the War Injuries (Compensation Insurance) Amendment Ordinance, 1944 (54 of 1944).

charge of the purposes of the Fund, the Central Government shall pay into the Fund as an advance out of general revenues such amount as the Central Government considers necessary.

(3) If when all payments which have to be made out of the Fund have been defrayed, any balance remains in the Fund, the balance shall be constituted into a Fund to be utilised and administered by the Central Government for the benefit of workmen.

(4) The Central Government shall prepare in such form and manner as may be prescribed and shall publish every six months an account of all sums received into and paid out of the Fund.

12. (1) Where a person (in this section referred to as the principal) uses, in the course of or for the purposes of his trade or business, the services of workmen temporarily lent or let on hire to him by arrangement with another person with whom the workmen have entered into contracts of service or apprenticeship, or in the course of or for the purposes of his trade or business, contracts with any other person for the execution by or under such other person of the whole or any part of any work which is ordinarily part of the trade or business of the principal (either such other person being in this section referred to as the contractor) the principal shall obtain from the contractor the name of the agent of the Central Government acting under section 8 with whom he intends to insure, and shall report to that agent the existence of his arrangement or contract with the contractor.

Principals
and
contractors.

(2) Notwithstanding anything elsewhere contained in this Act, in any such case as is referred to in sub-section (1), it shall not be necessary for the contractor to insure against the liabilities imposed on him by this Act in respect of workmen employed by him whose services are lent or let on hire on such an arrangement or used in the execution of work on such a contract as is referred to in sub-section (1), where the arrangement or contract is for a term of less than one month.

(3) The Scheme may make provision for the supply by a contractor to a principal of any information necessary to enable the purposes of this section to be carried out including provision for punishment by fine not exceeding one thousand rupees for the contravention of any requirement of the Scheme.

13. (1) Any person authorised in this behalf by the Central Government may, for the purpose of ascertaining whether the requirements of this Act and of the Scheme have been complied with, require any employer to submit to him such accounts, books or other documents or to furnish to him such information or to give such certificates as he may reasonably think necessary.

Power of
Central
Government
to obtain
information.

(2) Whoever wilfully obstructs any person in the exercise of his powers under this section or fails without reasonable excuse to comply with any request made thereunder shall, in respect of each occasion on which any such obstruction or failure takes place, be punishable with fine which may extend to one thousand rupees.

(3) Whoever in purporting to comply with his obligations under this section knowingly or recklessly makes a statement false in a material particular shall be punishable with fine which may extend to one thousand rupees.

Recovery
of premium
unpaid.

14. (1) Without prejudice to the provisions of sub-section (2) of section 9, where any person has failed to insure as or to the full amount required by this Act and the Scheme and has thereby evaded the payment by way of premium of any money which he would have had to pay in accordance with the provisions of the Scheme but for such failure, an officer authorised in this behalf by the Central Government may determine the amount payment of which has been so evaded, and the amount so determined shall be payable by such person and shall be recoverable from him as provided in sub-section (2).

(2) Any sum payable in accordance with the provisions of the Scheme by way of premium on a policy of insurance issued under the Scheme and any amount determined as payable under sub-section (1) shall be recoverable as an arrear of land-revenue.

(3) Any person against whom a determination is made under sub-section (1) may, within the prescribed period, appeal against such determination to the Central Government whose decision shall be final.

Payment of
compensation where
employer has
failed to
insure.

15. Where an employer has failed to take out a policy of insurance as required by sub-section (1) of section 9, or having taken out a policy of insurance as required by that sub-section has failed to make the payments by way of premium thereon which are subsequently due from him in accordance with the provisions of the Scheme, payment of any compensation for the payment of which he is liable under this Act may be made out of the Fund, and the sum so paid together with a penalty of such amount not exceeding the sum so paid as may be determined by an officer authorised in this behalf by the Central Government shall be recoverable from the employer as an arrear of land revenue for payment into the Fund.

Limitation
of
prosecutions.

16. No prosecution for any offence punishable under this Act shall be instituted against any person except by or with the consent of the Central Government or an authority authorised in this behalf by the Central Government.

Composition
of offences.

17. Any offence punishable under sub-section (2) of section 9 may, either before or after the institution of the prosecution, be compounded by the Central Government or by any authority authorised in this behalf by the Central Government on payment for credit to the Fund of such sum as the Central Government or such authority, as the case may be, thinks fit.

Bar of
legal
proceedings.

18. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

(2) No suit shall be maintainable in any civil Court against the Central Government or a person acting as its agent under section 8 for

the full amount required by this Act and the Scheme and has thereby evaded the payment by way of premium of any money which he would have had to pay in accordance with the provisions of the Scheme but for such failure, an officer authorised in this behalf by the Central Government may determine the amount payment of which has been so evaded, and the amount so determined shall be payable by such person and shall be recoverable from him as provided in sub-section (2).

(2) Any sum payable in accordance with the provisions of the Scheme by way of premium on a policy of insurance issued under the scheme and any amount determined as payable under sub-section (1) shall be recoverable as an arrear of land-revenue.

(3) Any person against whom a determination is made under sub-section (1) may, within the prescribed period, appeal against such determination to the Central Government whose decision shall be final.

15. Where an employer has failed to take out a policy of insurance as required by sub-section (1) of section 9, or having taken out a policy of insurance as required by that sub-section has failed to make the payments by way of premium thereon which are subsequently due from him in accordance with the provisions of the Scheme, payment of any compensation for the payment of which he is liable under this Act may be made out of the Fund, and the sum so paid together with a penalty of such amount not exceeding the sum so paid as may be determined by an officer authorised in this behalf by the Central Government shall be recoverable from the employer as an arrear of land revenue for payment into the Fund.

Payment of compensation where employer has failed to insure.

16. No prosecution for any offence punishable under this Act shall be instituted against any person except by or with the consent of the Central Government or an authority authorised in this behalf by the Central Government.

Limitation of prosecutions.

17. Any offence punishable under sub-section (2) of section 9 may, either before or after the institution of the prosecution, be compounded by the Central Government or by any authority authorised in this behalf by the Central Government on payment for credit to the Fund of such sum as the Central Government or such authority, as the case may be, thinks fit.

Composition of offences.

18. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Bar of legal proceedings.

(2) No suit shall be maintainable in any civil Court against the Central Government or a person acting as its agent under section 8 for the refund of any money paid or purporting to have been paid by way of premium on a policy of insurance taken out or purporting to have been taken out under this Act.

19. The Central Government shall exempt any employer from the provisions of this Act on the employer's request, if satisfied that he has before the commencement of this Act entered into a contract with insurers substantially covering the liabilities imposed on him by this Act, for so long as that contract continues.

Power to exempt employers.

20. (1) The Central Government may, by notification in the official Gazette, make rules to carry into effect the provisions of this Act.

Power to make rules.

(2) Without prejudice to the generality of the foregoing power such rules may prescribe—

(a) the principles to be followed in ascertaining the total wages bill of an employer, including provision for the exclusion therefrom of certain categories of wages or of certain elements included in the definition of wages;

(b) the form of the policies of insurance referred to in sub-section (2) of section 7;

(c) the period referred to in clause (g) of sub-section (5) of section 7;

1 * * * *

(e) the date and the period referred to in sub-section (1) of section 9;

(f) the form of and the manner of preparing and publishing the account referred to in sub-section (4) of section 11;

(g) the periods referred to in sub-section (3) of section 14.

Applications
of the Scheme
to acceding
State or
other
Indian State

21. (1) If the Central Government is satisfied that by the law of an ~~Indian State~~² ~~or of the French Establishments in India~~ or of the Administered Areas provision has been made substantially corresponding to the provision made by this Act imposing liabilities upon employers and requiring them to take out policies of insurance covering such liabilities, the Central Government may, by notification in the official Gazette, declare that this section shall apply ⁴to the territory of ~~that State, or of those Establishments~~ or comprising the Administered Areas.]

(2) On the application of this section ⁵to any such territory the scheme made under this Act shall extend to the undertaking by the Central Government in respect of employers ⁶in that territory of the same liabilities in the same manner, to the same extent and subject to the same conditions as if such employers were in ~~the Provinces~~. a p

A or Part C States

(3) On the application of this section ⁵to any such territory the provisions of section 10 shall be deemed to prohibit any person except a person authorised by the Central Government as its agent to issue policies in pursuance of the Scheme from carrying on after the date of the notification by which this section is applied the business of insuring employers ⁶in that territory against liabilities insurance against which is provided under the Scheme.

¹ Clause (d) rep. by s. 8 of the War Injuries (Compensation Insurance) Amendment Ordinance, 1944 (54 of 1944).

² *Sic.* This should, it seems, have been amended by the A.O. 1948 to read "Acceding State or other Indian State".

³ Ins. by s. 9 of Ordinance 54 of 1944.

⁴ Subs. for "to that State", *ibid.*

⁵ Subs. for "to any State", *ibid.*

⁶ Subs. for "in that State", *ibid.*

⁷ Subs. by the A.O. 1948 for "British India".

[THE FIRST SCHEDULE.]

[See sections 2 (1) and 5 (1).]

Item No.	Injury.	Percentage of disability.
1	Loss of two or more limbs. Lunacy. Jacksonian epilepsy. Very severe facial disfigurement.	100
2	Loss of right arm above or at the elbow.	90
3	Severe facial disfigurement. Total loss of speech. Loss of left arm above or at the elbow. Loss of right arm below the elbow. Loss of leg at or above the knee.	70
4	Loss of left arm below the elbow. Loss of leg below the knee. Permanent total loss of hearing.	60
5	Loss of one eye. Loss of right thumb or four fingers of right hand.	50
6	Loss of all toes of both feet above knuckle. Loss of left thumb or four fingers of left hand or three fingers of right hand.	40
7	Loss of all toes of one foot above knuckle. Loss of all toes of both feet at or below knuckle.	30
8	Limited restriction of movement of joints through injury without penetration, limited function of limb through fracture. Loss of two fingers of either hand. Compound fracture of thumb or two or more fingers of either hand with impaired function.	20
9	Loss of one phalanx of thumb. Loss of index finger. Loss of great toe.	10

[THE SECOND SCHEDULE.]

[See section 11 (1).]

1. The Cantonment of Baroda.
2. The Administered Areas in the Western India States Agency specified in the Western India States Administered Areas (Application of Laws) Order, 1937.
3. The Administered Areas in the Central India Agency specified in the Central India Administered Areas (Application of Laws) Order, 1937.
4. The Gwalior Residency Area.
5. The District of Abu.

¹ Subs. for "The Schedule" by s. 10 of the War Injuries (Compensation Insurance) Amendment Ordinance, 1944 (54 of 1944).

² Ins., *ibid.*

6. The Administered Areas in the Hyderabad State specified in the Hyderabad Administered Areas (Application of Laws) Order, 1937.
7. The Civil and Military Station of Bangalore.
8. The Kolhapur Residency Area and the Wadi Jaghir.
9. The railway lands in the Western India States Agency specified in the notifications of the Political Department Nos. 189-I.B. and 190-I.B., dated the 8th September 1937.
10. The Rajputana and Central India Railway lands specified in the Rajputana and Central India Railway Lands (Application of Laws) Order, 1937.
11. The Punjab States railway lands specified in the Punjab States Railway Lands (Application of Laws) Order, 1939.
12. The Thana Circles in the Rewa Kantha Agency in the Gujarat States Agency and the Dangs.
13. The British Reserve in Manipur.
14. The Shillong Administered Areas.]

THE CENTRAL EXCISES AND SALT ACT, 1944.

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1ACT NO. I of 1944.

[24th February, 1944.]

An Act to consolidate and amend the law relating to central duties of excise and to salt.

WHEREAS it is expedient to consolidate and amend the law relating to central duties of excise on goods manufactured or produced in ²[~~the Provinces~~ of India] and to salt;

~~Certain Parts~~

It is hereby enacted as follows:—

CHAPTER I.

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Central Excises and Salt Act, 1944;

(2) It extends to ^{whole}~~all~~ the ~~Provinces~~ of India; ~~except the State of~~
~~Jammu & Kashmir~~

xxv/50

(3) It shall come into force on such ⁴date as the Central Government may, by notification in the official Gazette, appoint in this behalf

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “broker” or “commission agent” means a person who in the ordinary course of business makes contracts for the sale or purchase of excisable goods for others;

(b) “Central Excise Officer” means any officer of the Central Excise Department, or any person (including an officer of the Provincial Government) invested by the Central Board of Revenue with any of the powers of a Central Excise Officer under this Act;

(c) “curing” includes wilting, drying, fermenting and any process for rendering an unmanufactured product fit for marketing or manufacture;

¹ For Statement of Objects and Reasons. see Gazette of India, 1943, Pt. V, p. 243 and for Report of the Select Committee. see Gazette of India, 1944, Pt. V, p. 12.

This Act has been applied to:—

- (1) all the partially excluded areas in the Province of Orissa by Orissa Government Notification No. 1223-11-C-13/44-Com., dated the 21st March, 1944;
- (2) Darjeeling District with effect from 28th February, 1944, see the Bengal Government notification No. 342-R., dated the 22nd March, 1944;
- (3) Excluded areas in the Province of Madras (with modifications) see Madras Government notification No. 37, Fort St. George Gazette, Pt. I, p. 281, dated 11th April 1944.
- (4) Partially excluded areas in the Province of Madras with effect from 28th February, 1944, see Madras Government notification No. 745-Public Political, dated the 4th March, 1944.

² Subs. by the A.O. 1948 for “British India”.

³ Subs. by the A.O. 1948 for “the whole of British India”.

⁴ The 28th February, 1944, see Gazette of India, 1944, Extraordinary, p. 293.

- (d) "excisable goods" means goods specified in the First Schedule as being subject to a duty of excise and includes salt;
- (e) "factory" means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt, are manufactured, or wherein or in any part of which any manufacturing process connected with the pro-

(ee) India' means the territory of India excluding the State of Jammu and Kashmir.

XXV/50.

-
- (f) in relation to tobacco includes the preparation of cigarettes, cigars, cheroots, biris, cigarette or pipe or hookah tobacco, chewing tobacco or snuff, and
- (ii) in relation to salt, includes collection, removal, preparation, steeping, evaporation, boiling, or any one or more of these processes, the separation or purification of salt obtained in the manufacture of saltpetre, the separation of salt from earth or other substance so as to produce alimentary salt, and the excavation or removal of natural saline deposits or efflorescence; and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account if those goods are intended for sale;
- (g) "prescribed" means prescribed by rules made under this Act;
- (h) "sale" and "purchase", with their grammatical variations and cognate expressions, mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration;
- (i) "saltpetre" includes *rasi*, *sajji*, and all other substances manufactured from saline earth, and *kharinun* and every form of sulphate or carbonate of soda;
- (j) "salt factory" includes—
- (i) a place used or intended to be used in the manufacture of salt and all embankments, reservoirs, condensing and evaporating pans, buildings and waste places situated within the limits of such place; as defined from time to time by the Collector of Central Excise;
- (ii) all drying grounds and storage platforms and store-houses appertaining to any such place;
- (iii) land on which salt is spontaneously produced;
- and a "private salt factory" is one not solely owned or not solely worked by the Central Government;

"3A. (1) If at any time, except when both Houses of Parliament are in session the Central Govt. is satisfied that in respect of any excisable goods the duty of excise leviable thereon should be increased and that circumstances exist which render it necessary that immediate action should be taken, the Central Govt. may, by notification in the Official Gazette, direct an amendment of the First Schedule to be made so as to amend the First Schedule to be made so as to provide for an increase in the duty of excise leviable:

Emergency power of Central Govt. to increase duties of excise.

sub-section (1) excisable goods produced or on behalf of, or than a the purposes of kind carried

Provided that such increase shall not in the aggregate be more than fifty per cent of the duty of excise fixed by an Act of Parliament as being leviable on the goods for the time being.

(2) Every such notification shall be laid before Parliament within seven days of its re-assembly after the date of the notification and the Central Govt. shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before it, and, if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

at a emed and ce of it any amount

official to the Indian

(3) Where, under any notification issued under this section the duty of excise leviable

in 5 of XXXII of 1934 by this sec].

First Schedule.

Certain operations to be subject to licence.

6. The Central Government may, by notification in the official Gazette, provide that, from such date as may be specified in the notification, no person shall, except under the authority and in accordance with the terms and conditions of a licence granted under this Act, engage in—

- (a) the production or manufacture or any process of the production or manufacture of any specified excisable goods or of saltpetre or of any specified component parts or ingredients of such goods or of specified containers of such goods, or

1 Subs. by the A.O. 1948 for "British India".
2 Subs. by the A.O. 1948 for "Indian State".

- (b) the wholesale purchase or sale (whether on his own account or as a broker or commission agent) or the storage of any excisable goods specified in this behalf in Part A of the Second Schedule.

7. Every licence under section 6 shall be granted for such area, if any, for such period, subject to such restrictions and conditions, and in such form and containing such particulars, as may be prescribed.

Form and conditions of licence.

8. From such date as may be specified in this behalf by the Central Government by notification in the official Gazette, no person shall, except as provided by rules made under this Act, have in his possession any excisable goods specified in this behalf in Part B of the Second Schedule in excess of such quantity as may be prescribed for the purposes of this section as the maximum amount of such goods or of any variety of such goods which may be possessed at any one time by such a person.

Restriction on possession of excisable goods.

9. Whoever commits any of the following offences, namely:—

Offences and Penalties,

- (a) contravenes any of the provisions of a notification issued under section 6 or of section 8, or of a rule made under clause (iii) of sub-section (2) of section 37;

- (b) evades the payment of any duty payable under this Act;

- (c) fails to supply any information which he is required by rules made under this Act to supply, or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information;

- (d) attempts to commit, or abets the commission of, any of the offences mentioned in clauses (a) and (b) of this section;

shall, for every such offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

10. Any ^{the Government} Court trying an offence under this Chapter may order the forfeiture to His Majesty of any goods in respect of which the Court is satisfied that an offence under this Chapter has been committed, and may also order the forfeiture of any receptacles, packages or coverings in which such goods are contained and the animals, vehicles, vessels or other conveyances used in carrying the goods, and any implements or machinery used in the manufacture of the goods.

Power of Courts to order forfeiture.

11. In respect of duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or of the rules made thereunder, the officer empowered by the Central Board of Revenue to levy such duty or require the payment of such sums may deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control, or may recover the amount by attachment and sale of excisable goods belonging to such person; and if the amount payable is not so recovered he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in which such person

Recovery of sums due to Government.

resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land-revenue.

Application of the provisions of Act VI of 1878 to central excise duties.

12. The Central Government may, by notification in the official Gazette, declare that any of the provisions of the Sea Customs Act, 1878, relating to the levy of and exemption from customs duties, drawback of duty, warehousing, offences and penalties, confiscation, and procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duties imposed by section 3.

CHAPTER III.

POWERS AND DUTIES OF OFFICERS AND LANDHOLDERS.

Power to arrest.

13. (1) Any Central Excise officer duly empowered by the Central Government in this behalf may arrest any person whom he has reason to believe to be liable to punishment under this Act.

(2) Any person accused or reasonably suspected of committing an offence under this Act or any rules made thereunder, who on demand of any officer duly empowered by the Central Government in this behalf refuses to give his name and residence, or who gives a name or residence which such officer has reason to believe to be false, may be arrested by such officer in order that his name and residence may be ascertained.

Power to summon persons to give evidence and produce documents in inquiries under this Act.

14. (1) Any Central Excise officer duly empowered by the Central Government in this behalf shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of this Act. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(2) All persons so summoned shall be bound to attend, either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required:

Provided that the exemptions under sections 132 and 133 of the Code of Civil Procedure shall be applicable to requisitions for attendance under this section.

(3) Every such inquiry as aforesaid shall be deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code. XLV of 1860

Officers required to assist Central Excise Officers.

15. All officers of Police and Customs and all officers of Government engaged in the collection of land-revenue, and all village officers are hereby empowered and required to assist the Central Excise officers in the execution of this Act.

16. Every owner or occupier of land, and the agent of any such owner or occupier, in charge of the management of that land, if contraband excisable goods are manufactured thereon, shall in the absence of reasonable excuse be bound to give notice of such manufacture to a Magistrate, or to an officer of the Central Excise, Customs, Police, or Land Revenue Department, immediately the fact comes to his knowledge.

Owners or occupiers of land to report manufacture of contraband excisable goods.

17. Any owner or occupier of land or any agent of such owner or occupier in charge of the management of that land, who wilfully contrives at any offence against the provisions of this Act or of any rules made thereunder shall for every such offence be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Punishment for contrivance at offences.

V of 1898. 18. All searches made under this Act or any rules made thereunder and all arrests made under this Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898, relating respectively to searches and arrests made under that Code.

Searches and arrests how to be made.

19. Every person arrested under this Act shall be forwarded without delay to the nearest Central Excise officer empowered to send persons so arrested to a Magistrate, or, if there is no such Central Excise officer within a reasonable distance, to the officer-in-charge of the nearest police-station.

Disposal of persons arrested.

20. The officer-in-charge of a police-station to whom any person is forwarded under section 19 shall either admit him to bail to appear before the Magistrate having jurisdiction, or in default of bail forward him in custody to such Magistrate.

Procedure to be followed by officer-in-charge of police-station.

21. (1) When any person is forwarded under section 19 to a Central Excise officer empowered to send persons so arrested to a Magistrate, the Central Excise officer shall proceed to inquire into the charge against him.

Inquiry how to be made by Central Excise officers against persons forwarded to them under section 19.

(2) For this purpose the Central Excise officer may exercise the same powers and shall be subject to the same provisions as the officer-in-charge of a police-station may exercise and is subject to under the Code of Criminal Procedure, 1898, when investigating a cognizable case:

V of 1898,

Provided that—

(a) if the Central Excise officer is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;

(b) if it appears to the Central Excise officer that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the Central Excise officer may direct, to appear, if and when so required before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior.

Vexatious
search,
seizure, etc.
by Central
Excise
officer.

22. Any Central Excise or other officer exercising powers under this Act or under the rules made thereunder who—

- (a) without reasonable ground of suspicion searches or causes to be searched any house, boat or place;
- (b) vexatiously and unnecessarily detains, searches or arrests any person;
- (c) vexatiously and unnecessarily seizes the movable property of any person, on pretence of seizing or searching for any article liable to confiscation under this Act;
- (d) commits, as such officer, any other act to the injury of any person, without having reason to believe that such act is required for the execution of his duty;

shall, for every such offence, be punishable with fine which may extend to two thousand rupees.

Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall be punishable with fine which may extend to two thousand rupees or with imprisonment for a term which may extend to two years or with both.

Failure of
Central
excise
officer on
duty,

23. Any Central Excise officer who ceases or refuses to perform or withdraws himself from the duties of his office, unless he has obtained the express written permission of the Collector of Central Excise, or has given to his superior officer two months' notice in writing of his intention or has other lawful excuse, shall on conviction before a Magistrate be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to three months' pay, or with both.

CHAPTER IV.

TRANSPORT BY SEA.

Penalties
for carrying
excisable
goods in
certain
vessels.

24. When any excisable goods are carried by sea in any vessel other than a vessel of the burden of three hundred tons and upwards, the owner and master of such vessel shall each be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Exceptions.

25. Nothing in section 24 applies to—

- (a) any excisable goods covered by a permit granted under rules made under this Act;
- (b) any excisable goods covered by a pass granted by any officer whom the Central Board of Revenue may appoint in this behalf;
- (c) such amount of excisable goods carried on board any vessel for consumption by her crew or by the passengers or animals (if any) on board as the Central Board of Revenue may from time to time exempt from the operation of section 24.

26. When any officer empowered by the Central Board of Revenue to act under this section has reason to believe, from personal knowledge or from information taken down in writing, that any excisable goods are being carried, or have within the previous twenty-four hours been carried, in any vessel so as to render the owner or master of such vessel liable to the penalties imposed by section 24, he may require such vessel to be brought-to and thereupon may—

Power of stoppage, search and arrest.

- (a) enter and search the vessel;
- (b) require the master of the vessel to produce any documents in his possession relating to the vessel or the cargo thereof;
- (c) seize the vessel if the officer has reason to believe it liable to confiscation under this Act, and cause it to be brought with its crew and cargo into any port in ~~the Provinces~~ ^{the Dominion}; and
- (d) where any excisable goods are found on board the vessel, search and arrest without a warrant any person on board the vessel whom he has reason to believe to be punishable under section 24.

27. Any master of a vessel refusing or neglecting to bring to the vessel or to produce his papers when required to do so by an officer acting under section 26, and any person obstructing any such officer in the performance of his duty, may be arrested by such officer without a warrant, and shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

Penalties for resisting officer.

28. (1) Every vessel (including all appurtenances) in which any excisable goods are carried so as to render the owner or master of such vessel liable to penalties imposed by section 24, the cargo on board such vessel and the excisable goods in respect of which an offence under this Act has been committed shall be liable to confiscation on the orders of the officer empowered in this behalf by the Central Government.

Confiscation of vessel and cargo.

(2) Whenever any Customs-officer is satisfied that any article is liable to confiscation under this section he may seize such article, and shall at once report the seizure to his superior officer for the information of the officer empowered to order confiscation under sub-section (1) and such officer may, if satisfied on such report or after making such inquiry as he thinks fit, that the article so seized is liable to confiscation, either declare it to be confiscated, or impose a fine in lieu thereof not exceeding the value of the article.

29. Any offence punishable under section 24 or section 27 may be deemed to have been committed within the limits of the jurisdiction of the Magistrate of any place where the offender is found, or to which, if arrested under section 26 or section 27, he may be brought.

Jurisdiction.

30. The Central Government may, by notification in the official Gazette, exempt the carriage of excisable goods within any local limits or in any class of vessels from the operation of this Chapter, and, by like notification, again subject such carriage to the operation of this Chapter.

Power to exempt from operation of this Chapter.

¹ Subs. by the A.O. 1948 for "British India".

CHAPTER V.

SPECIAL PROVISIONS RELATING TO SALT.

Special and permanent rights of manufacturing salt to be recognised.

31. The proprietor of a private salt factory who has by virtue of a sanad granted by the ^{Government} British or any former Government, a special and permanent right to manufacture salt, or to excavate or collect natural salt, shall on application made in accordance with the rules made under this Act be entitled to a licence for such purpose and to the annual renewal thereof, unless on a breach of the provisions of this Act, his licence has been cancelled by an officer duly empowered by the Central Government in this behalf.

Rights of ordinary proprietors of existing salt-works.

32. Every proprietor of a private salt-work, other than a private salt factory, to which section 31 applies, of which, under the provisions of section 17 of the Bombay Salt Act, 1890, the proprietor was entitled on application to a licence to manufacture or to excavate or collect natural salt at such factory, shall continue to be entitled, on application made in accordance with the rules made under this Act, to a licence for such purpose and to the annual renewal thereof, unless on a breach of the provisions of this Act his licence has been cancelled by an officer duly empowered by the Central Government in this behalf:

B. m. II of 1890,

Provided that the Collector of Central Excise may at any time withdraw or withhold a licence from the proprietor of any such salt factory, if no salt has been manufactured, excavated or collected in such salt factory for the three years ending on the thirtieth day of June last preceding the date of his order, or, with the previous sanction of the Central Board of Revenue, if such salt factory has not produced, on an average, during the said three years, at least five thousand maunds of salt per annum.

CHAPTER VI.

ADJUDICATION OF CONFISCATIONS AND PENALTIES.

Power of adjudication.

33. Where by the rules made under this Act any thing is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged—

- (a) without limit, by a Collector of Central Excise;
- (b) up to confiscation of goods not exceeding five hundred rupees in value and imposition of penalty not exceeding two hundred and fifty rupees, by an Assistant Collector of Central Excise:

Provided that the Central Board of Revenue may, in the case of any officer performing the duties of an Assistant Collector of Central Excise, reduce the limits indicated in clause (b) of this section, and may confer on any officer the powers indicated in clause (a) or (b) of this section.

Option to pay fine in lieu of confiscation.

34. Wherever confiscation is adjudged under this Act or the rules made thereunder, the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit.

35. (1) Any person deeming himself aggrieved by any decision or order passed by a Central Excise officer under this Act or the rules made thereunder may, within three months from the date of such decision or order, appeal therefrom to the Central Board of Revenue, or, in such cases as the Central Government directs, to any Central Excise officer not inferior in rank to an Assistant Collector of Central Excise and empowered in that behalf by the Central Government. Such authority or officer may thereupon make such further inquiry and pass such order as he thinks fit, confirming, altering or annulling the decision or order appealed against: Appeals.

Provided that no such order in appeal shall have the effect of subjecting any person to any greater confiscation or penalty than has been adjudged against him in the original decision or order.

(2) Every order passed in appeal under this section shall, subject to the power of revision conferred by section 36, be final.

36. The Central Government may on the application of any person aggrieved by any decision or order passed under this Act or the rules made thereunder by any Central Excise officer or by the Central Board of Revenue, and, from which no appeal lies, reverse or modify such decision or order. Revision by Central Government

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

37. (1) The Central Government may make rules to carry into effect the purposes of this Act. Power of Central Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

- (i) provide for the assessment and collection of duties of excise, the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duties shall be payable, and the recovery of duty not paid;
- (ii) prohibit absolutely, or with such exceptions, or subject to such conditions as the Central Government thinks fit, the production or manufacture, or any process of the production or manufacture, of excisable goods, or of any component parts or ingredients or containers thereof, except on land or premises approved for the purpose;
- (iii) prohibit absolutely, or with such exceptions, or subject to such conditions as the Central Government thinks fit, the bringing of excisable goods into ¹the Provinces from the ~~territory of any specified Prince or Chief in India,~~ or the transit of excisable goods from any part of ²the Provinces to any other part thereof; ³India

¹ For such Rules, see Gazette of India, 1944, Extraordinary, p. 422 or Gen. R. & O. Supplementary Vol. VIII, p. 247.

² Subs. by the A. O. 1948 for "British India".

- (iv) regulate the removal of excisable goods from the place where produced, stored or manufactured or subjected to any process of production or manufacture and their transport to or from the premises of a licensed person, or a bonded warehouse, or to a market;
- (v) regulate the production or manufacture, or any process of the production or manufacture, the possession, storage and sale of salt, and so far as such regulation is essential for the proper levy and collection of the duties imposed by this Act, of any other excisable goods, or of any component parts or ingredients or containers thereof;
- (vi) provide for the employment of officers of the Crown to supervise the carrying out of any rules made under this Act;
- (vii) require a manufacturer or the licensee of a warehouse to provide accommodation within the precincts of his factory or warehouse for officers employed to supervise the carrying out of regulations made under this Act and prescribe the scale of such accommodation;
- (viii) provide for the appointment, licensing, management and supervision of bonded warehouses and the procedure to be followed in entering goods into and clearing goods from such warehouses;
- (ix) provide for the distinguishing of goods which have been manufactured under licence, of materials which have been imported under licence, and of goods on which duty has been paid, or which are exempt from duty under this Act;
- (x) impose on persons engaged in the production or manufacture, storage or sale (whether on their own account or as brokers or commission agents) of salt, and, so far as such imposition is essential for the proper levy and collection of the duties imposed by this Act, of any other excisable goods, the duty of furnishing information, keeping records and making returns, and prescribe the nature of such information and the form of such records and returns, the particulars to be contained therein, and the manner in which they shall be verified;
- (xi) require that excisable goods shall not be sold or offered or kept for sale in [the Provinces] except in prescribed containers, bearing a handerol, stamp or label of such nature and affixed in such manner as may be prescribed;
- (xii) provide for the issue of licences and transport permits and the fees, if any, to be charged therefor:

Provided that the fees for the licensing of the manufacture and refining of salt and saltpetre shall not exceed, in the case of each such licence, the following amounts, namely—

¹ Subs. by the A.O. 1948 for "British India".

	Rs.
Licence to manufacture and refine saltpetre and to separate and purify salt in the process of such manufacture and refining ...	50
Licence to manufacture saltpetre	2
Licence to manufacture sulphate of soda (<i>Kharaiun</i>) by solar heat in evaporating pans	10
Licence to manufacture sulphate of soda (<i>Kharaiun</i>) by artificial heat ..	2
Licence to manufacture other saline substances	2

(xiii) provide for the detention of goods, plant, machinery or material, for the purpose of exacting the duty, the procedure in connection with the confiscation, otherwise than under section 10 or section 28, of goods in respect of which breaches of the Act or rules have been committed, and the disposal of goods so detained or confiscated;

(xiv) authorise and regulate the inspection of factories and provide for the taking of samples, and for the making of tests, of any substance produced therein, and for the inspection or search of any place or conveyance used for the production, storage, sale or transport of salt, and so far as such inspection or search is essential for the proper levy and collection of the duties imposed by this Act, of any other excisable goods;

(xv) authorise and regulate the composition of offences against, or liabilities incurred under, this Act or the rules made thereunder;

(xvi) provide for the grant of a rebate of the duty paid on goods which are exported out of India or shipped for consumption on a voyage to any port outside India:

Provided that rules made under this clause shall provide that when steel ingots on which the duty of excise imposed by this Act has been paid, or articles of iron or steel manufactured in ¹[the Provinces] from such ingots, are exported out of India, there shall be payable to the exporter of such ingots or articles subject to such conditions as may be prescribed, a refund at the following rates, namely:—

on ingots, blooms and billets—

a refund at the rate of four rupees per ton,

on other manufactures of iron or steel—

(a) not fabricated—a refund at the rate of five and one-third rupees per ton;

(b) fabricated—a refund at the rate of six rupees per ton;

(xvii) exempt any goods from the whole or any part of the duty imposed by this Act;

¹ Subs. by the A.O. 1948 for "British India".

(xviii) define an area no point in which shall be more than one hundred yards from the nearest point of any place in which salt is stored or sold by or on behalf of the Central Government, or of any factory in which saltpetre is manufactured or refined, and regulate the possession, storage and sale of salt within such area;

(xix) define an area round any other place in which salt is manufactured, and regulate the possession, storage and sale of salt within such area;

(xx) authorise the Central Board of Revenue or Collectors of Central Excise appointed for the purposes of this Act to provide, by written instructions, for supplemental matters arising out of any rule made by the Central Government under this section.

(3) In making rules under this section, the Central Government may provide that any person committing a breach of any rule shall, where no other penalty is provided by this Act, be liable to a penalty not exceeding two thousand rupees and that any article in respect of which any such breach is committed shall be confiscated.

Publica-
tion of
rules and
notifica-
tions.

38. All rules made and notifications issued under this Act shall be made and issued by publication in the official Gazette. All such rules and notifications shall thereupon have effect as if enacted in this Act:

statement

statement

Provided that every such rule shall be laid as soon as may be after it is made before ¹ * * the ~~Central Legislature~~, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more sessions, and if before the expiry of that period, ² [that Legislature makes any modification in the rule or directs] that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be.

39. [Repeal of enactments. Rep. by s. 2 and Sch. of the Repealing and Amending Act, 1948 (2 of 1948).

Bar of
suits and
limitation
of suits
and other
legal
proceed-
ings.

40. (1) No suit shall lie against the Central Government or against any officer of the Crown in respect of any order passed in good faith or any act in good faith done or ordered to be done under this Act.

(2) No suit, prosecution, or other legal proceeding shall be instituted for anything done or ordered to be done under this Act after the expiration of six months from the accrual of the cause of action or from the date of the act or order complained of.

¹ The words "each of the Chambers of" rep. by the A. O. 1948.

² Subs. by the A.O. 1948 for "or where the period for which the rule is so laid before one Chamber does not coincide with that for which it is so laid before the other, before the expiry of the later of these periods, both Chambers agree in making any modification in the rule or both Chambers agree".

FIRST SCHEDULE.

(See section 3)

Item No.	Description of goods.	Rate of duty.
1 KEROSENE—		
	"Kerosene" means any inflammable hydrocarbon (including any mixture of hydrocarbons or any liquid containing hydrocarbons but excluding motor-spirit) which—	
	(i) is made from petroleum as defined in section 2 of the ¹ [Petroleum Act, 1934], and	
	(ii) is intended to be or is ordinarily used in liquid form for purposes of illumination.	The rate at which Customs duty is for the time being leviable under the Indian Tariff Act, 1934, read with any other enactment for the time being in force.
2 MATCHES—		
	"Match" includes a firework in the form of a match; and, where a match-stick has more heads than one capable of being ignited by striking, each such head shall be deemed to be a match.	
	(1) Matches, manufactured in a factory whose daily output exceeds one hundred gross of boxes, in boxes or booklets containing on an average—	
	2* * * *	
	2[(i)] 3* * * not more than fifty matches.	Two rupees and eight annas .
	2[(ii)] more than fifty, but not more than sixty matches.	Three rupees. }
	2[(iii)] more than sixty, but not more than eighty matches.	Four rupees . }
	(2) Matches, manufactured in a factory whose daily output does not exceed one hundred gross of boxes, in boxes or booklets containing on an average—	
	2* * * *	
	2[(i)] ³ * * * not more than fifty matches.	Two rupees and seven annas. }
	2[(ii)] more than fifty, but not more than sixty matches.	Two rupees, fourteen annas and nine pies. }
	2[(iii)] more than sixty, but not more than eighty matches.	Three rupees and fourteen annas and four pies. }
	(3) Matches in boxes containing on an average not more than twelve matches of the type known as "Bengal Lights".	Ten annas per gross of boxes.
	(4) All other matches	Eight annas for every 1,440 matches or fraction thereof.

¹ Subs. by s. 3 and Sch. II of the Repealing and Amending Act, 1945 (6 of 1945), for "Indian Petroleum Act, 1899".

² Item (i), was rep. and items (ii), (iii) and (iv) re-numbered (i), (ii) and (iii) respectively by s. 7 of the Indian Finance Act, 1948 (20 of 1948).

³ The words "more than forty, but" were rep., *ibid*.

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1934XXXII of
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Item No.	Description of goods.	Rate of duty.
3 MECHANICAL LIGHTERS—		
	"Mechanical Lighter" means any mechanical or chemical contrivance for causing ignition which is portable and which operates by producing a spark or flame whether by itself or when brought into contact with gas, and includes a mechanical lighter issued from a factory in an incomplete state or requiring for its completion the addition of a flint.	Three rupees per lighter.
4 MOTOR SPIRIT—		
	"Motor spirit" means—	
	(a) any inflammable hydro-carbon (including any mixture of hydro-carbons or any liquid containing hydro-carbons) which is capable of being used for providing reasonably efficient motive power for any form of motor vehicle <u>and</u> <i>or aircraft</i>	
	(b) power alcohol, that is, ethyl alcohol of any grade (including such alcohol when denatured or otherwise treated), which either by itself or in admixture with any such hydro-carbon, is capable of being used as aforesaid.	xx 11/5 1 1[Twelve] annas per imperial gallon.
5 SALT—		
	"Salt" includes swamp salt, spontaneous salt, and salt or saline solutions made or produced from any saline substance or from salt earth.	For the year ending the 31st day of March, 1944, the rate fixed by section 2 of the Indian Finance Act, 1943, read with section 5 of the Indian Finance (Supplementary and Extending) Act, 1941, and thereafter the rate fixed annually by Act of the Central Legislature. Act. VIII of 1943, <u>XLVII/52</u>
6 SILVER		Three annas and seven and one fifth pies per ounce Troy.
7 STEEL INGOTS		Four rupees per ton.
8 SUGAR, PRODUCED IN A FACTORY ORDINARILY USING POWER IN THE COURSE OF PRODUCTION OF SUGAR—		
	"Sugar" means any form of sugar containing more than ninety per cent. of sucrose:—	
	(1) Sugar other than Khandsari or Palmyra.	Three rupees per cwt.
	(2) Khandsari sugar— that is to say, sugar in the manufacture of which neither a vacuum pan nor a vacuum evaporator is employed.	Eight annas per cwt.
	(3) Palmyra sugar— that is to say, sugar manufactured from jaggery obtained by boiling the juice of the palmyra palm.	NIL.

¹ Subs. for "Fifteen" by s. 8 of the Indian Finance Act, 1946 (7 of 1946) (with effect from 1st March, 1946).

Item No.	Description of good.	Rate of duty.
1[9]	TOBACCO—	
	"Tobacco" means any form of tobacco, whether cured or uncured, and whether manufactured or not, and includes the leaf, stalk and stems of the tobacco plant but does not include any part of a tobacco plant while still attached to the earth.	See slip 22.11/51
1.	Unmanufactured tobacco—	
	(1) if flue-cured and intended for—	
	(a) manufacture into cigarettes containing—	
	2[(i) more than 60 per cent. weight of imported tobacco.	Per lb. Seven rupees and eight annas.
	(ii) more than 40 per cent. but not more than 60 per cent. weight of imported tobacco.	Five rupees.
	(iii) more than 20 per cent. but not more than 40 per cent. weight of imported tobacco.	Three rupees and eight annas.
	(iv) 20 per cent. or less than 20 per cent. weight of imported tobacco.	Two rupees and eight annas.
	(v) no imported tobacco	One rupee.]
	(b) any purpose other than the manufacture of cigarettes or of the products enumerated in (3)(a) and (3)(b).	5[Seven rupees and eight annas.]
	(2) if other than flue-cured and intended for—	
	(a) manufacture into cigarettes	Nine annas.
	(b) any purpose other than the manufacture of cigarettes or of the products enumerated in (3)(a) and (3)(b).	4[Twelve annas.]
	(3) whether flue-cured or not, if intended for—	
	(a) manufacture into—	
	(i) biris	4[Twelve annas.]
	(ii) Snuff	4[Twelve annas.]
	(iii) cigars and cheroots	5[Four annas.]
	(iv) hookah tobacco	5[Four annas.]
	(b) sale as chewing tobacco, whether manufactured or merely cured	5[Four annas.]
	(c) agricultural purposes	Nil.
	(4) Stalks, 6 ² and other refuse of tobacco intended for use in the preparation of any form of manufactured tobacco.	One anna.

1 Subs. by s. 5 and Sch. I of the Indian Finance Act, 1914.

2 Subs. by s. 6 of the Indian Finance Act, 1945.

3 Subs. by s. 6. *ibid.* for "Three rupees and eight annas".

4 Subs. for "Nine annas" by s. 7 of the Indian Finance Act, 1948 (20 of 1948).

5 Subs. for "Three", *ibid.*

6 The word "stems" was rep. by s. 6 of the Indian Finance Act, 1945.

Item No.	Description of goods.	Rate of duty.
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See slip

II. Manufactured tobacco—

¹[1] Cigars and cheroots of which the value—

	Per hundred.
(i) exceeds Rs. 30 a hundred	Twelve rupees.
(ii) exceeds Rs. 25 a hundred but does not exceed Rs. 30 a hundred.	Ten rupees.
(iii) exceeds Rs. 20 a hundred but does not exceed Rs. 25 a hundred.	Eight rupees.
(iv) exceeds Rs. 15 a hundred but does not exceed Rs. 20 a hundred.	Six rupees.
(v) exceeds Rs. 10 a hundred but does not exceed Rs. 15 a hundred.	Four rupees.
(vi) exceeds Rs. 5 a hundred but does not exceed Rs. 10 a hundred.	Two rupees.
(vii) exceeds Rs. 2-8 a hundred but does not exceed Rs. 5 a hundred.	One rupee.
(viii) exceeds Rs. 1-4 a hundred but does not exceed Rs. 2-8 a hundred.	Eight annas.
(ix) exceeds Anna- 12 a hundred but does not exceed Rs. 1-4 a hundred.	Four annas.

¹[2] Cigarettes of which the value—

	Per thousand.
(i) exceeds Rs. 50 a thousand	Twelve rupees and eight annas.
(ii) exceeds Rs. 40 a thousand but does not exceed Rs. 50 a thousand.	Ten rupees.
(iii) exceeds Rs. 30 a thousand but does not exceed Rs. 40 a thousand.	Seven rupees and eight annas.
(iv) exceeds Rs. 25 a thousand but does not exceed Rs. 30 a thousand.	Six rupees and four annas.
(v) exceeds Rs. 20 a thousand but does not exceed Rs. 25 a thousand.	Five rupees.
(vi) exceeds Rs. 15 a thousand but does not exceed Rs. 20 a thousand.	Three rupees and twelve annas.

(3) Biris is the manufacture of which any process has been conducted with the aid of machines operated with or without the aid of power.

Three rupees per thousand

C.A.34/54.

cover of such a tyre.

II. VEGETABLE PRODUCT—

"Vegetable product" means any vegetable oil or fat which, whether by itself or in admixture with any other substance, has by hydrogenation or by any other process been hardened for human consumption.

³[Seven] rupees per cwt.

4: * * *

¹ Ins. by s. 7 of the Indian Finance Act, 1948 (20 of 1948).

² Subs. for "Ten", *ibid.*

³ Subs. for "Five", *ibid.*

⁴ Item 12 which had been ins. by the Indian Finance Act, 1944 and amended by the Indian Finance Act, 1946 (7 of 1946) was rep., *ibid.*

14. TEA --

"Tea" includes all varieties of the product known commercially as tea, and also includes green tea.

(1) Package tea, that is to say tea packed in any kind of container containing not more than 60 lbs net of tea--

(i) if, before being so packed,
duty has been paid thereon Three annas
under sub-item (2) of this per lb. net
item.

(ii) if, before being so packed,
duty has not been paid Four annas
thereon under sub-item (2) per lb. net
of this item.

(2) Tea not otherwise specified One anna per
lb. net.
15/53.

⁴[2]. Coffee } a broker or commission agent]

PART B.

Excisable goods specified for the purposes of section 8--

1. Tobacco.

THIRD SCHEDULE—Rep. by s. 2 and Sch. of the Repealing and Amending Act, 1947 (2 of 1948).

THE INDIAN COCONUT COMMITTEE ACT, 1944.

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SECTIONS.

1. Short title and extent.
2. Definitions.
3. Imposition of coconut cess.
4. Constitution of Indian Coconut Committee.
5. Incorporation of the Committee.
6. Vacancies.
7. President of Committee, Secretary, sub-committees and staff.

¹ Ins. by s. 5 and Sch. I of the Indian Finance Act, 1944.

² Subs. for "Two" by s. 7 of the Indian Finance Act, 1948 (20 of 1948).

³ The figure and word "2. Petel-nuts" were rep. *ibid.*

⁴ Subs. for the figure "3", *ibid.*

SECTIONS.

8. Appointment of officers.
9. Application of Fund.
10. Delivery of monthly returns.
11. Collection of cess by Collector.
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13. Power to inspect mills and take copies of records and accounts.
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16. Keeping and auditing of accounts.
17. Dissolution of Committee.
18. Power of the Central Government to make rules.
19. Power of the Committee to make regulations.
20. Publication of rules and regulations.

'ACT No. X of 1944.

[1st March, 1944.]

An Act to provide for the creation of a fund for the improvement and development of the cultivation, marketing and utilization of coconuts in India.

WHEREAS it is expedient to provide for the creation of a fund to be expended by a Committee specially constituted in this behalf for the improvement and development of the cultivation, marketing and utilization of coconuts in India;

(2) It extends to the whole of India:

Provided that it shall not apply to the States of Jammu and Kashmir except to the extent to which the provisions of this Act relate to the levy and collection of the duty of excise specified therein.

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(a) "Collector" means the officer appointed by the Central Government to perform in any specified area the duties of a Collector under the provisions of this Act and the rules made thereunder, and includes any officer subordinate to that officer whom he may by order in writing authorise to perform his duties under those provisions;]

¹ For Statement of Objects and Reasons, see Gazette of India, 1944, Pt. V, p. 9 and for Report of Select Committee, see *ibid*, p. 34.

² Subs. by the A.O. 1948 for "the whole of British India".

³ Subs. by s. 2 of the Indian Coconut Committee (Amendment) Act, 1946 (15 of 1946) for the original clause.

(c) 'mill' means any premises in which or in any part of which copra is crushed or is ordinarily crushed with the aid of power for the extraction of

(bbb) 'managing agent' has the meaning assigned to it in the Companies Act, 1956.

C.A. 47/56. lly animal

of (cc) 'occupier' in relation to any mill, means the person who has ultimate control over the affairs of the mill, and where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the mill.

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exercise at such rate, not exceeding four annas per cwt., as the Central Government may, after consulting the Committee, by notification in the official Gazette, fix in this behalf.

[(2) On the last day of each month, or as soon thereafter as may be convenient, the proceeds of the duty recovered during that month shall, after deduction of the expenses, if any, of collection and recovery, be paid to the Committee, and the Committee shall credit the said proceeds and any other monies received by it to a fund called the Coconut Improvement Fund.]

4. As soon as may be after the commencement of this Act, the Central Government shall cause to be constituted a Committee consisting of the

Constitu-
tion of

(i) for clause (a), the following clauses shall be substituted, namely:-^{it}

(a) the Vice-President, Indian Council of Agricultural Research;

(aa) the Agricultural Marketing Adviser with the Government of India;

LXIX/52.

Government of [West Bengal], the Government of Orissa, the Government of the State of Mysore, and the Government of the State of Cochin;

Cwt of A. P
and

(c) five persons representing the coconut oil industry, nominated, respectively, by the Government of Madras, the Govern

CA/47/56

(d) eight persons representing, respectively, the Government of Andhra Pradesh, Assam, Mysore, Bombay, Madras, Orissa, West Bengal, and Kerala appointed in each by the State Government.

LXIX/52 & 47,

1 Ins. by s. 2 of the Indian Coconut Committee (Amendment) Act, 1946 (15 of 1946).

2 Subs. for "Indian Factories Act, 1934" by s. 3 and Sch. II of the Repealing and Amending Act, 1945 (6 of 1945).

3 S. 3 was re-numbered as sub-section (1) and sub-section (2) ins. by s. 3 of Act 15 of 1946.

4 Subs. by the A.O. 1948 for "British India".

5 Subs. for "and expend the proceeds of the duty collected under this Act" by s. 4 of Act 15 of 1946.

6 Subs. by the A.O. 1948 for "Bengal".

* See now the Factories Act, 1948.

(c) one person nominated by the Travancore Chamber of

(g) three other persons, of whom two shall be elected from among themselves by the members of the House of the people and one shall be elected from among themselves by the members of the Council of States.

C.A. 47/56,

Incorporation of the Committee.

5. The Committee shall be a body corporate by the name of the Indian Central Coconut Committee, having perpetual succession and a common seal with power to acquire and hold property, both moveable and immoveable, and to contract, and shall by the said name sue and be sued.

Vacancies.

6. (1) If within the period prescribed in this behalf, or within such further period as the Central Government may allow, any authority or body fails to make any nomination, election or appointment which it is entitled to make under section 4, the Central Government may itself appoint a member to fill the vacancy in the Committee.

(2) Where a member of the Committee dies, resigns or is removed, or ceases to reside in India, or becomes incapable of acting, the Central Government may, on the recommendation of the authority or body which was entitled to make the first nomination, election or appointment under section 4, or where such recommendation is not made within a reasonable time, then on its own initiative, appoint a person to fill the vacancy.

(1) The Central Government may appoint any of the persons referred to in section 4 or any other person to be the President of the Committee, and if any other person is so appointed that other person shall be deemed to be a member of the Committee for all the purposes of this Act.

President of Committee, Secretary, sub-committees and staff.

Secretary of the Committee and such person shall be paid by the Committee such salary and such allowances as may be fixed by the Central Government.

(3) The Committee may appoint such sub-committees and staff as may be necessary for the efficient performance of its functions under this Act.

Appointment of officers.

8. The Central Government may, on the recommendation of the Committee, appoint an officer or officers to discharge under the direction of the Committee such duties as may be prescribed, and such officer or officers shall be paid by the Committee such salary and allowances as may be fixed by the Central Government.

¹ Subs. by the A.O. 1948 for "two".

² Subs. by the A.O. 1948 for "elected members of the Legislative Assembly".

³ The words "one shall be a person elected from among themselves by the elected members of the Council of State" were rep. by the A.O. 1948.

19. (1) The Committee shall apply the Fund to meeting the expenses of the Committee and the cost of such measures as it may consider necessary or expedient to take for the improvement and development of the cultivation and marketing of coconuts and of the production, utilisation and marketing of copra, coconut oil and coconut poonac ^{and such other coconut products (excepting copra and its products) and the Committee may determine} Applica-
tion of
Fund.

(2) Without prejudice to the generality of the foregoing power, the Committee may utilise the Fund to defray expenditure involved in— LXIX/52

- (a) undertaking, assisting or encouraging agricultural, industrial, technological and economic research;
- (b) the supply of technical advice to growers ^{of coconut and the seasons there based in any coconut gardens.}
- (c) encouraging the adoption of improved methods in cultivation;
- (d) carrying on such propaganda in the interests of the coconut industry as may be necessary;
- (e) collecting statistics from growers, dealers, millers and other sources on all relevant matters bearing on the industry;
- (f) fixing grade standards of copra and its products;
- (g) recommending the maximum and minimum prices to be fixed ^{for copra.}

9A. Owners of mills to supply certain particulars to Collector.— (1) The occupier of every mill shall —

- (a) if the mill was established before the commencement of the Indian Coconut Committee (Amendment) Act, 1952, within fourteen days of such commencement; and
- (b) if the mill is established after the commencement of the Indian Coconut Committee (Amendment) Act, 1952 within fourteen days of such establishment furnish to the Collector a statement containing the following particulars, namely:—
 - (i) the name and situation of the mill;
 - (ii) the name and address of the occupier;
 - (iii) the address to which communications relating to the mill may be sent; and
 - (iv) the total capacity of the mill to crush copra.

(2) Whoever fails to comply with the provisions of sub-section (1) shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both. very of
shly
ns.

47/56.

Provided that no return shall be required in regard to copra consumed before the commencement of this Act.

(2) Every such return shall be made in such form and shall be verified in such manner as may be prescribed.

Collection
of cess by
Collector.

11. (1) On receiving any return made under section 10, the Collector shall assess the amount of the duty payable under section 3 in respect of the period to which the return relates, and if the amount has not already been paid shall cause a notice to be served upon the owner of the mill requiring him to make payment of the amount assessed within thirty days of the service of the notice.

(2) If the ~~owner~~^{occupier} of any mill fails to furnish in due time the return referred to in sub-section (1) of section 10 or furnishes a return which the Collector has reason to believe is incorrect or defective the Collector shall assess the amount if any, payable by him in such manner, as may be prescribed, and the provisions of sub-section (1) shall thereupon apply as if such assessment had been made on the basis of a return furnished by the ~~owner~~^{occupier}.

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Provided that, in the case of a return which he has reason to believe is incorrect or defective, the Collector shall not assess the duty at an amount higher than that at which it is assessable on the basis of the return without giving to the ~~owner~~^{occupier} a reasonable opportunity of proving the correctness and completeness of the return.

(3) A notice under sub-section (1) may be served on the ~~owner~~^{occupier} of a mill either by post or by delivering it or tendering it to the ~~owner~~^{occupier} or his agent at the mill.

Finality of
assessment
and
recovery of
unpaid
duty.

12. (1) Any ~~owner~~^{occupier} of a mill who is aggrieved by an assessment made under section 11 may, within three months of service of the notice referred to in sub-section (1) of that section, apply to the District Judge, or in a Presidency-town, to the Chief Judge of the Small Cause Court for the cancellation or modification of the assessment and, on such application, the said Judge may cancel or modify the assessment and order the refund to such ~~owner~~^{occupier} of the whole or part, as the case may be, of any amount paid thereunder.

(2) The decision under sub-section (1) of the District Judge or the Chief Judge of the Small Cause Court, as the case may be, shall be final.]

(3) Any sum recoverable under section 11 may be recovered as an arrear of land-revenue.

Power to
inspect
mills and
take copies
of records
and
accounts.

13. (1) The Collector or any officer empowered by general or special order of the Central Government in this behalf shall have free access at all reasonable times during working hours to any mill or to any part of any mill.

(2) The Collector or any such officer may at any time ²[during working hours], with or without notice to the ~~owner~~^{occupier}, examine the

¹ Subs. by s. 6 of the Indian Coconut Committee (Amendment) Act, 1946 (15 of 1946).
² Ins. by a 7, *ibid*.

[purchase, sale and stock] records and accounts of any mill and take copies of or extracts from all or any of the said records or accounts for the purpose of testing the accuracy of any return or of informing himself as to the particulars regarding which information is required for the purposes of this Act or any rules made thereunder.

²[Provided that nothing in this section shall be deemed to authorise the examination of any description or formulae of any trade process.]

14. (1) All such copies and extracts and all information acquired by a Collector or any other officer from an inspection of any mill or warehouse or from any return submitted under this Act shall be treated as confidential.

Information acquired to be confidential.

(2) If the Collector or any such officer discloses to any person other than a superior officer any such information as aforesaid without the previous sanction of the Central Government, he shall be punishable with imprisonment which may extend to six months and shall also be liable to fine:

Provided that nothing in this section shall apply to the disclosure of any such information for the purposes of a prosecution in respect of the making of a false return under this Act.

15. [Application of proceeds of duty.] Rep. by s. 8 of the Indian Coconut Committee (Amendment) Act, 1946 (15 of 1946).

16. (1) The Committee shall publish an annual report and shall keep accounts of all duty received by it under this Act and of the manner in which it is expended and shall also publish a summary of the accounts along with the annual report.

Keeping and auditing of accounts.

(2) Such accounts shall be examined and audited annually in the prescribed manner, and the auditors shall have power to disallow any item which has been, in their opinion, expended otherwise than in pursuance of the purposes of this Act.

(3) If any item is disallowed, an appeal shall lie to the Central Government whose decision shall be final.

17. The Central Government may ¹[with the previous approval of the ~~Central Legislature~~] by notification in the official Gazette, declare that, with effect from such date as may be specified in the notification, the Committee shall be dissolved, and on the making of such declaration all funds and other property vested in the Committee shall vest in ~~His Majesty for the purposes of~~ the Central Government and this Act shall be deemed to have been repealed.

Dissolution of Committee.

18. (1) The Central Government may make ⁶rules for the purpose of carrying into effect the provisions of this Act.

Power of the Central Government to make rules.

¹ Subs. for "working records, sale" by s. 7 of the Indian Coconut Committee (Amendment) Act, 1946 (15 of 1946).

² Ins., *ibid.*

³ Sub-section (3) was rep., *ibid.*

⁴ Ins. by s. 9, *ibid.*

⁵ The words "of both Chambers" were rep. by the A.O. 1948.

⁶ For such Rules, see Gazette of India, Pt. I, p. 716 or Genl. R. & O. (1948-49) Vol., p. 512.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) for prescribing the time within which nominations or elections shall be made under section 4 whether in the first instance or on the occurrence of vacancies;
- (b) for prescribing the term of office of the members of the Committee;
- (c) for prescribing the circumstances in which and the authority by which any member may be removed;
- (d) for prescribing the quorum of the Committee;
- (e) for the holding of a minimum number of meetings of the Committee during any year;
- (f) for the maintenance by the Committee of a record of all business transacted and the submission of copies of such records to the Central Government;
- (g) for the definition of the powers of the Committee to enter into contracts which shall be binding on the Committee, and the manner in which such contracts shall be executed;
- (h) for the regulation of the travelling allowances of members of the Committee and of their remuneration, if any;
- (i) for the definition of the powers of the Committee, in respect of the appointment, promotion and dismissal of officers and servants of the Committee, and in respect of the creation and abolition of appointments of such officers or servants;
- (j) for the regulation of the grant of pay and leave to officers and servants of the Committee, and the payment of leave allowances to such officers and servants, and the remuneration to be paid to any person appointed to act for any officer or servant to whom leave is granted;
- (k) for the regulation of the payment of pensions, gratuities, compassionate allowances and travelling allowances to officers and servants of the Committee;
- (l) for prescribing the establishment and maintenance of a provident fund for the officers and servants of the Committee, and for the deduction of subscriptions to such provident fund from the pay and allowances of such officers and servants, other than Government servants whose services have been lent or transferred to the Committee;
- (m) for prescribing the preparation of budget estimates of the annual receipts and expenditure of the ²[Fund] and of supplementary estimates of expenditure not included in the budget estimates, and the manner in which such estimates shall be sanctioned and published;

¹ For the Indian Central Coconut Committee Provident Fund Rules, see Gazette of India, 1947, Pt. I, p. 671.

² Subs. for "Committee" by s. 10 of the Indian Coconut Committee (Amendment) Act, 1946 (15 of 1946).

- (n) for defining the powers of the Committee, the Standing Finance Sub-Committee, if any, and the President, respectively, in regard to the expenditure ¹[from the Fund], whether provision has or has not been made in the budget estimates or by re-appropriation for such expenditure, and in regard to the re-appropriation of estimated savings in the budget estimates of expenditure;
- (o) for prescribing the maintenance of accounts of the receipts and expenditure of the ²[Fund] and providing for the audit of such accounts;
- (p) for prescribing the manner in which payments are to be made by or on behalf of the Committee, and the officers by whom orders for making deposits or investments or for withdrawals or disposal of the funds of the Committee shall be signed;
- (q) for determining the custody in which the current account of the ²[Fund] shall be kept, and the bank or banks at which surplus monies at the credit of the ²[Fund] may be deposited at interest, and the conditions on which such monies may be otherwise invested;
- (r) for prescribing the preparation of a statement showing the sums allotted to Departments of Agriculture or institutions not under the direct control of the Committee for expenditure on research, the actual expenditure incurred, the outstanding liabilities, if any, and the disposal of unexpended balances at the end of the year;
- ³[(rr) for prescribing the manner in which any amount of duty paid in excess may be refunded;]
- (s) for prescribing the duties of the officers appointed under section 8, and the powers and duties of the Secretary of the Committee;
- (t) any other matter which is to be or may be prescribed.

Power of the Committee to make regulations.

19. The Committee may, with the previous sanction of the Central Government, make regulations consistent with this Act and with any rules made under section 18 to provide for all or any of the following matters, namely:—

- (a) the appointment of a Standing Finance Sub-Committee or other Sub-Committee and the delegation thereto of any powers exercisable under this Act by the Committee;
- (b) the method of appointment, removal and replacement and the term of office of members of the Sub-Committees, and for the filling of vacancies therein;

¹ Subs. for "of the funds of the Committee" by s. 10 of the Indian Coconut Committee (Amendment) Act, 1946 (15 of 1946).

² Subs., *ibid.* for "Committee".

³ Ins., *ibid.*

⁴ For such regulations, see Gazette of India, 1945, Pt. I, p. 1146 or Genl. R. & O. (1948-49) Vol., p. 521.

- (c) the dates, times and places for meetings of the Committee and the Sub-Committees and the procedure to be observed at such meetings;
- (d) the circumstances in which security may be demanded from officers and servants of the Committee, and the amount and nature of such security in each case;
- (e) the times at which, and the circumstances in which, payments may be made out of the provident fund and the conditions on which such payments shall relieve the fund from further liability;
- (f) the contribution, if any, payable from the funds of the Committee to the provident fund;
- (g) generally all matters incidental to the provident fund and the investment thereof.

Publica-
tion of rules
and
regulation

29. All rules made under section 18 and all regulations made under section 19 shall be published in the *Gazette of India*.

THE PUBLIC DEBT (CENTRAL GOVERNMENT) ACT, 1944

Act No. XVIII of 1944

[22nd November, 1944.]

An Act to consolidate and amend the law relating to Government securities issued by the ~~Central Government~~ and to the management by the Reserve Bank of India of the public debt of the ~~Central Government~~.

1A. Securities to which this Act applies.. This Act, applies to Government securities created and issued whether before or after the commencement of this Act by the Central Govt. or a State Govt. other than the Govt. of Jammu and Kashmir

C.A. 57/56.

(3) It shall come into force on such date as the Central Government

Short title,
extent and
commence-
ment.

Definition

(1-A) "the Government" in relation to any Government security means the Central or the State Government issuing the security.

VI/49.

¹ For Statement of Objects and Reasons, see *Gazette of India*, 1943, Pt. V, p. 162; and for Report of Select Committee, see *ibid.*, 1944, Pt. V, p. 85.

² Subs. by the A.O. 1948 for "the whole of British India".

³ The 1st May 1946, see *Gazette of India*, 1946, Pt. I, p. 575.

(2) "Government security" means—

(a) a security, created and issued, ~~whether before or after the commencement of this Act, by the Central Government for the purpose of raising a public loan, and having one of the following forms namely:—~~ 57/56

3 (1) Subject to the provisions of section 5, a transfer of a Government security shall be made only in the manner prescribed for the making of transfers of securities of the class to which it belongs, and no transfer of a Government security which—

(i) is made after the 30th April, 1946, in the case of a security issued by the Central Government.

(ii) is made after the 31st March, 1949, in the case of a security issued by the Government of a Part A State, (cc slip)

(iii) is made after the 14th Oct. 1956, in the case of a security issued by the Govt. of a Part B State other than Jammu and Kashmir, and Transfer of Government securities.

(iv) is made on or after the 1st day of Nov. 1956, in the case of a security issued on or after that day by the Government of any State other than Jammu and Kashmir,

shall be valid if--

A.O.(3)/56.

4. Notwithstanding anything contained in the Negotiable Instruments Act, 1881, a person shall not, by reason only of his having transferred a Government security, be liable to pay any money due either as principal or as interest thereunder.

Transferor of Government securities not liable for amount thereof.

5. (1) In the case of any public office to which the Central Government may, by notification in the official Gazette, declare this subsection to apply, a Government security in the form of stock or of a promissory note may be held in the name of the office.

Holding of Government securities by holders of public offices,

(2) When a Government security is so held, it shall be deemed to be transferred without any or further endorsement or transfer deed from each holder of the office to the succeeding holder of the office on and from the date on which the latter takes charge of the office.

(3) When the holder of the office transfers to a party not being his successor in office a Government security so held, the transfer shall be made by the signature of the holder of the office and the name of the office in the manner and subject to the conditions laid down in section 3.

(4) This section applies as well to an office of which there are two or more joint holders as to an office of which there is a single holder.

Notice of
trust not
receivable.

6. (1) No notice of any trust in respect of any Government security shall be receivable by the Central Government, nor shall the Central Government be bound by any such notice even though expressly given, nor shall the Central Government be regarded as a trustee in respect of any Government security.

(2) Without prejudice to the provisions of sub-section (1), the Bank may, as an act of grace and without any liability to the Bank or to the Central Government, record in its books such directions by the holder of stock for the payment of interest on, or of the maturity value of, or the transfer of, or such other matters relating to, the stock as the Bank thinks fit.

Persons
whose title
to a
Govern-
ment
security of
a deceased
sole holder
may be
recognised
by the
Bank.

7. Subject to the provisions of section 9 the executors or administrators of a deceased sole holder of a Government security and the holder of a succession certificate issued under Part X of the Indian Succession Act, 1925, shall be the only persons who may be recognised by the Bank as having any title to the Government security:

XXXIX of
1925.

Provided that nothing in this section shall bar the recognition by the Bank of the manager or the sole surviving male member of a Hindu undivided family governed by the Mitakshara Law as having a title to a Government security, when the security appears to the Bank to stand in the name of a deceased member of the family and an application is made by such manager or sole surviving member for recognition of his title and is supported by a certificate signed by such authority and after such inquiry as may be prescribed to the effect that the deceased belonged to a Hindu undivided family governed by the Mitakshara Law, that the Government security formed part of the joint property of the family, and that the applicant is the managing or sole surviving male member of the family.

Explanation.—The expression “Hindu undivided family governed by the Mitakshara Law” shall, for the purposes of this section, be deemed to include a Malabar *tarwad*.

Right of
survivors
of joint
holders or
several
payees.

8. Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872,— IX of 1927

(a) when a Government security is held by two or more persons jointly and either or any of them dies, the title to the security shall vest in the survivor or survivors of those persons, and

(b) when a Government security is payable to two or more persons severally and either or any of them dies, the security shall be payable to the survivor or survivors of those persons or to the representative of the deceased or to any of them:

Provided that nothing contained in this section shall affect any claim which any representative of a deceased person may have against the survivor or survivors under or in respect of any security to which this section applies.

Explanation.—For the purposes of this section a body incorporated or deemed to be incorporated under the Indian Companies Act, 1913, or the Co-operative Societies VII of 1913,

Act, 1912, or any other enactment for the time being in force whether within or without ~~the Provinces~~ relating to the incorporation of associations of individuals, shall be deemed to die when it is dissolved.

[XXIX of
925.

9. Notwithstanding anything contained in section 7, if within six months of the death of a person who was the holder of a Government security or securities the face value of which does not in the aggregate exceed five thousand rupees, probate of his will or letters of administration of his estate or a succession certificate issued under Part X of the Indian Succession Act, 1925, is not produced to the Bank, or proof to the satisfaction of the Bank that proceedings have been instituted to obtain one of these is not furnished, the Bank may determine who is the person entitled to the security or securities, or to administer the estate of the deceased and may make an order vesting the security or securities in the person so determined.

Summary procedure on death of holder of Government securities not exceeding five thousand rupees face value.

10. When a Government security or securities belong to a minor or a person who is insane and incapable of managing his affairs and the face value of the security or securities does not in the aggregate exceed five thousand rupees, the Bank may make such order as it thinks fit for the vesting of such security or securities in such person as it considers represents the minor or insane person.

Government securities not exceeding five thousand rupees face value belonging to minor or insane person.

11. (1) If the person entitled to a Government security applies to the Bank alleging that the security has been lost, stolen or destroyed, or has been defaced or mutilated, the Bank may, on proof to its satisfaction of the loss, theft, destruction, defacement or mutilation of the security, subject to such conditions and on payment of such fees as may be prescribed, order the issue of a duplicate security payable to the applicant.

Issue of duplicate securities and of new securities on conversion, consolidation, sub-division or renewal

(2) If the person entitled to a Government security applies to the Bank to have the security converted into a security of another form, or into a security issued in connection with another loan or to have it consolidated with other like securities, or to have it sub-divided, or to have it renewed, the Bank may, subject to such conditions and on payment of such fees as may be prescribed, cancel the security and order the issue of a new security or securities.

(3) The person to whom a duplicate security or a new security is issued under this section shall be deemed for the purposes of section 19 to have been recognised by the Bank as the holder of the security; and a duplicate security or new security so issued to any person shall be deemed to constitute a new contract between the Central Government and such person and all persons deriving title thereafter through him.

12. (1) If the Bank is of opinion that a doubt exists as to the title to a Government security, it may proceed to determine the person who shall for the purposes of the Bank be deemed to be the person entitled thereto.

Summary determination by the Bank of title to Government security in case of dispute,

(2) The Bank shall give notice in writing to each claimant of whom it has knowledge, stating the names of all other claimants and the time when and the officer of the Bank by whom the determination of the Bank will be made.

(3) The Bank shall give notice in writing to each claimant of the result of the determination so made.

(4) On the expiry of six months from the issue of the notices referred to in sub-section (3), the Bank may make an order vesting in the person, found by the Bank to be entitled to the security, the security and any unpaid interest thereon.

Law appli-
cable in
regard to
Govern-
ment
securities.

India
5/1/56

Recording
of evidence

13. Notwithstanding that as a matter of convenience the Central Government may have arranged for payments on a Government security to be made elsewhere than in ~~the Provinces~~, the rights of all persons in relation to Government securities shall be determined in connection with all such questions as are dealt with by this Act by the law and in the Courts of ~~the Provinces~~ India

14. (1) For the purpose of making any order which it is empowered to make under this Act, the Bank may request a District Magistrate or in an Indian State the Political Agent to record or to have recorded the whole or any part of such evidence as any person whose evidence the Bank requires may produce. A District Magistrate so requested may himself record, or may direct any Magistrate of the first class subordinate to him or any Magistrate of the second class subordinate to him and empowered in this behalf by general or special order of the ~~Provincial~~ Government to record the evidence, and shall forward a copy thereof to the Bank.

(2) For the purpose of making a vesting order under this Act the Bank may direct one of its officers to record the evidence of any person whose evidence the Bank requires or may receive evidence upon affidavit.

(3) A Magistrate or an officer of the Bank acting in pursuance of this section may administer an oath to any witness examined by him.

Postpone-
ment of pay-
ments and
registration
of transfers
pending
the making
of a vesting
order.

Power of
Bank to
require
bonds.

15. Where the Bank contemplates making an order under this Act to vest a Government security in any person, the Bank may suspend payment of interest on or the maturity value of the security or postpone the making of any order under section 11 or the registration of any transfer of the security until the vesting order has been made.

16. (1) Before making any order which it is empowered to make under this Act, the Bank may require the person in whose favour the order is to be made to execute a bond with one or more sureties in such form as may be prescribed or to furnish security not exceeding twice the value of the subject-matter of the order, to be held at the disposal of the Bank, to pay to the Bank or any person to whom the Bank may assign the bond or security in furtherance of sub-section (2) the amount thereof.

(2) A Court before which a claim in respect of the subject-matter of any such order is established may order the bond or security to be assigned to the successful claimant who shall thereupon be entitled to enforce the bond or realise the security to the extent of such claim.

17. Any notice required to be given by the Bank under this Act may be served by post, but every such notice shall also be published by the Bank in the ~~official~~ Gazette, and on such publication shall be deemed to have been delivered to all persons for whom it is intended.

Publication of notices in official Gazette.

18. An order made by the Bank under this Act may confer the full title to a Government security or may confer a title only to the accrued and accruing interest on the security pending a further order vesting the full title.

Scope of vesting order,

19. No recognition by the Bank of a person as the holder of a Government security, and no order made by the Bank under this Act shall be called in question by any Court so far as such recognition or order affects the relations of the ~~Central~~ Government or the Bank with the person recognised by the Bank as the holder of a Government security or with any person claiming an interest in such security: and any such recognition by the Bank of any person or any order by the Bank vesting a Government security in any person shall operate to confer on that person a title to the security subject only to a personal liability to the rightful owner of the security for money had and received on his account.

Legal effect of orders made by the Bank.

20. Where the Bank contemplates making with reference to any Government security any order which it is empowered to make under this Act, and before the order is made the Bank receives from a Court in ~~[the Provinces]~~ an order to stay the making of such order, the Bank shall either—

Stay of proceedings on order of Court,

(a) hold the security together with any interest unpaid or accruing thereon until the further orders of the Court are received, or

(b) apply to the Court to have the security transferred to the official Trustees appointed for the Province in which such Court is situated, pending the disposal of the proceedings before the Court.

21. Where the Bank contemplates making an order under this Act vesting a Government security in any person the Bank may, at any time before the order is made, cancel any proceedings already taken for that purpose and may, on such cancellation, proceed anew to the making of such order.

Cancellation by the Bank of vesting proceedings

22. Save as otherwise expressly provided in the terms of a Government security, no person shall be entitled to claim interest on such security in respect of any period which has elapsed after the earliest date on which demand could have been made for the payment of the amount due on such security.

Discharge in respect of interest on Government securities.

¹ Subs. by the A.O. 1948 for "British India".

Discharge
in respect
of bearer
bonds.

23. The ~~Central~~ Government shall be discharged from all liability on a bearer bond or on any interest coupon of such a bond on payment to the holder of such bond or coupon on presentation on or after the date when it becomes due of the amount expressed therein, unless before such payment an order of a Court in ~~[the Provinces]~~ has been served on the ~~Central~~ Government restraining it from making payment.

Period of
limitation
of Central
Govern-
ment's
liability in
respect of
interest,
Inspection
of docu-
ments.

24. Where no shorter period of limitation is fixed by any law for the time being in force, the liability of the ~~Central~~ Government in respect of any interest payment due on a Government security shall terminate on the expiry of six years from the date on which the amount due by way of interest became payable.

25. No person shall be entitled to inspect, or to receive information derived from any Government security in the possession or custody of the ~~Central~~ Government or from any book, register, or other document kept or maintained by or on behalf of the ~~Central~~ Government in relation to Government securities or any Government security, save in such circumstances and manner and subject to such conditions as may be prescribed.

The Bank
and its
officers to
be deemed
public
officers.

26. For the purposes of section 124 of the Indian Evidence Act, 1872, the provisions of Part IV of the Code of Civil Procedure, 1908, relating to suits by or against public officers in their official capacity, and the provisions of rule 27 of Order V, and rule 52 of Order XXI of the said Code, the Bank and any officer of the Bank acting in his capacity as such shall be deemed to be a public officer.

I of 1872,
V of 1908.

Penalty,

27. (1) If any person, for the purpose of obtaining for himself or for any other person any title to a Government security, makes to any authority under this Act in any application made under this Act or in the course of any inquiry undertaken in pursuance of this Act any statement which is false and which he either knows to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to six months, or with fine or with both.

(2) No Court shall take cognisance of any offence under sub-section (1) except on the complaint of the Bank.

Power to
make rules.

28. (1) The ~~Central~~ Government may, subject to the condition of previous publication, by notification in the official Gazette, make ²rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:—

- (a) the forms in which Government securities may be issued;
- (b) the form of the obligations referred to in clause (iv) of sub-clause (a) of clause (2) of section 2;
- (c) the conditions subject to which Government securities may be issued to the rulers of ~~Indian States~~ ^{former};

¹ Subs. by the A.O. 1948 for "British India".

² For the Public Debt (Central Government) Rules, 1946 see Gazette of India, 1946,

- (d) the manner in which different forms of Government securities may be transferred;
- (e) the holding of Government securities in the form of stock by the holders of offices other than public offices, and the manner in which and the conditions subject to which Government securities so held may be transferred;
- (f) the manner in which payment of interest in respect of Government securities is to be made and acknowledged;
- (g) the conditions governing the grant of duplicate, renewed, converted, consolidated and sub-divided Government securities;
- (h) the fees to be paid in respect of the issue of duplicate Government securities and of the renewal, conversion, consolidation and sub-division of Government securities;
- (i) the form in which receipt of a Government security delivered for discharge, renewal, conversion, consolidation or sub-division is to be acknowledged;

29. Certain laws not to apply to Govt. securities.— The Indian Securities Act, 1920 and any law corresponding to that law in force in any Part B State immediately before the commencement of the Public Debt (Amdt.) Act, 1956 shall cease to apply to Govt. securities to which this Act applies and to all matters for which provision is made by this Act:

Provided that any such corresponding law shall continue to apply to or in relation to any securities created and issued by the Government of Hyderabad, Saurashtra or Travancore-Cochin on or before the 31st day of March, 1953, for such period not exceeding one year from the commencement of the Public Debt (Amdt.) Act, 1956, as the Central Government may, by notification in the Official Gazette, specify.

C.A. 57/56.

30. Construction of reference to laws not in force before 1st April, 1951, in Part B States.— Any reference in this Act to any law which did not extend to any Part B State or any part of such State before the commencement of the Part B States (Laws) Act 1951, shall wherever necessary be construed as including a reference to the corresponding law, if any, in force in that State, or, as the case may be, any part thereof, before the said date.

Act X of 1920 not to apply to Government securities.

C.A. 57/56.

THE INDIAN FINANCE ACT, 1944.

[31st March, 1944.]

An Act to give effect to the financial proposals of the Central Government for the year beginning on the 1st day of April, 1944.

WHEREAS it is expedient to fix the duty on salt manufactured in, or imported by land into ²the Provinces to fix maximum rates of postage under the Indian Post Office Act, 1898, to continue for a further period of one year the additional duties of customs imposed by section 6 of the Indian Finance Act, 1942, and to increase certain of those duties, to alter the duty of excise on tobacco and to impose duties of excise on betel-nuts, coffee and tea, to fix rates of income-tax and super-tax, and to continue the charge and levy of excess profits tax and make certain additional provisions relating thereto;

VI of 1898.

XII of 1942.

It is hereby enacted as follows:—

Short title
and extent.

1. (1) This Act may be called the Indian Finance Act, 1944.

Fixation of
salt duty.

(2) It extends to ^{whole}all the Provinces of India, except the territories which immediately before the 1st Nov. 36 were comprised in Part B States.

2. The duty on salt manufactured in, or imported by land into, ²the Provinces shall, for the year beginning on the 1st day of April, 1944, be at the rate of one rupee and nine annas per standard maund.

Inland
postage
rates.

3. For the year beginning on the 1st day of April, 1944, the Schedule contained in Schedule I to the Indian Finance Act, 1943, shall again be inserted in the Indian Post Office Act, 1898, as the First Schedule to that Act.

VIII of 1943.

VI of 1891.

Continuation of, and enhancement of, additional duties of customs imposed by section 6, Act XII of 1942.

4. (1) The additional duties of customs on certain goods chargeable with a duty of customs under the First Schedule to the Indian Tariff Act, 1934, or under the said Schedule read with any notification of the Central Government for the time being in force, imposed up to the 31st day of March, 1943, by section 6 of the Indian Finance Act, 1942, and continued up to the 31st day of March, 1944, by section 4 of the Indian Finance Act, 1943 shall continue to be levied and collected as provided in section 6 of the Indian Finance Act, 1942, up to the 31st day of March, 1945, subject to the modification contained in sub-section (2).

XXXII of 1934.

XII of 1942.

VIII of 1943.

XII of 1943.

¹ This Act was made by the Governor General under s. 67-B of the Government of India Act as set out in the Ninth Schedule to the Government of India Act, 1935. No number was given to this Act.

For Statement of Objects and Reasons, see Gazette of India, 1944, Pt. V, p. 47.

The Act has been applied to:—

(1) all the partially excluded areas of the Province of Orissa, see Orissa Government notification No. 3763-Tax-5/44-F, dated 30th May, 1944;

(2) all the partially excluded areas of the Province of Madras, see Fort St. George Gazette, Pt. I, p. 281;

(3) the Darjeeling district with effect from 1st April 1944, see Ben. Government notification No. 6644-F.B., dated 11th April 1944;

² Subs. by the A.O. 1948 for "British India".

³ Subs. by the A.O. 1948 for "the whole of British India".

VXXII of
1934.

(2) The additional duty to be levied and collected under the foregoing sub-section shall be one-half instead of one-fifth of the amount of the duty of customs specified in the First Schedule to the Indian Tariff Act, 1934, in the case of the following goods, namely:—

- (a) spirits, comprised in Item No. 22(4) and in Item No. 22(5) of the said Schedule;
- (b) tobacco, comprised in Item No. 24 and in Item No. 24(3) of the said Schedule;
- (c) cigars, comprised in Item No. 24(1) of the said Schedule;
- (d) cigarettes, comprised in Item No. 24(2) of the said Schedule.

I of 1944.

5. The amendments set out in Part I and Part II of the First Schedule shall be made respectively in the First and Second Schedules to the Central Excises and Salt Act, 1944.

Alteration
of excise
duties on
tobacco and
imposition
of excise
duties on
betelnuts,
coffee and
tea.

6. (1) Subject to the provisions of sub-sections (2), (3) and (5),—

Income-tax
and super-
tax.

(a) income-tax for the year beginning on the 1st day of April, 1944, shall be charged at the rates specified in Part I of the Second Schedule increased in each case by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of income-tax, and

XI of 1922.

(b) rates of super-tax for the year beginning on the 1st day of April, 1944, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be those specified in Part II of the Second Schedule increased in the cases to which paragraphs A, B and C of that Part apply by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of super-tax.

(2) In making any assessment for the year ending on the 31st day of March, 1945,—

1944.

(a) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" or under the head "Interest on Securities" or any income from dividends in respect of which he is deemed under section 49B of the Indian Income-tax Act, 1922, to have paid income-tax imposed in ~~[the Provinces]~~, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1943, on his total income the same proportion as the amount of such inclusions bears to his total income;

XI of 1922.

[Part A states and
Part C states

VIII of
1943.

- (b) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" on which super-tax has been or might have been deducted under the provisions of sub-section (2) of section 18 of the Indian Income-tax Act, 1922, the super-tax payable by the assessee on that portion of his total income which consists of such inclusions shall be an amount bearing to the total amount of super-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1943, on his total income the same proportion as the amount of such inclusions bears to his total income.

XI of 1922.

VIII of 1943.

(3) In making any assessment for the year ending on the 31st day of March, 1944, or the year ending on the 31st day of March, 1945,—

- (a) where the total income of a company includes any profits and gains from life insurance business the super-tax payable by the company on that part of its total income which consists of such inclusion shall be in the case of an assessment for the first mentioned year at the rate of one anna and one pie in the rupee and in the case of an assessment for the second mentioned year at the rate of nine pies in the rupee;

- (b) where the total income of an assessee, not being a company, includes any profits and gains from life insurance business the income-tax and super-tax payable by the assessee on that part of his total income which consists of such inclusion shall be an amount bearing to the total amount of such taxes payable according to the rates applicable under the operation of the Indian Finance Act, 1942, on his total income the same proportion as the amount of such inclusion bears to his total income, so, however, that if the aggregate of the taxes so computed in respect of such inclusion exceeds the aggregate of the taxes on the same income payable by a company under the operation of the Indian Finance Act, 1942, the taxes payable on such inclusion shall be computed at the rates applicable to a company under the operation of the said Act.

XII of 1942.

XII of 1942.

(4) Where any assessment for the year ending on the 31st day of March, 1944, to which clause (a) or (b) or sub-section (3) is applicable has been completed at the rates of tax in operation under the Indian Finance Act, 1943, it shall be revised by the Income-tax Officer in accordance with the provisions of clause (a) or (b), as the case may be, of sub-section (3) and the excess tax paid, if any, shall be refunded.

VIII of 1943.

(5) In cases to which section 17 of the Indian Income-tax Act, 1922 applies, the tax chargeable shall be determined as provided in that section but with reference to the rates imposed by sub-section (1) of this section, and in accordance with the provisions of sub-sections (2) and (3) of this section where applicable.

XI of 1922.

(6) For the purposes of this section and of the rates of tax imposed thereby, the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922.

XI of 1922.

¹(7) Where the total income of an assessee referred to in paragraph A of Part I of the Second Schedule does not exceed six thousand rupees, an amount representing one rupee for every complete unit of two hundred rupees of his total income as reduced by the income, if any, exempt from tax under any provision of the Indian Income-tax Act, 1922, or any notification issued thereunder shall be funded for the assessee's benefit and shall be paid to him on such date, not more than twelve months after the termination of the present hostilities, as the Central Government may fix.

Explanation.—In computing the amount to be funded under this sub-section if there is an incomplete unit amounting to one hundred rupees or more it shall be reckoned as a complete unit of two hundred rupees.

XI of 1922. (8) The provisions of section 23A of the Indian Income-tax Act, 1922, shall not apply in respect of profits and gains of the previous year for the assessment for the year ending on the 31st day of March, 1945.

XV of 1940. 7. (1) In sub-clause (a) of clause (6) of section 2 of the Excess Profits Tax Act, 1940, for the words and figures "31st day of March, 1941", the words and figures "31st day of March, 1945", shall be substituted.

Continu-
ance of and
rate of
excess
profits tax,

XV of 1940. (2) The excess profits tax imposed by section 4 of the Excess Profits Tax Act, 1940, shall, in respect of any chargeable accounting period beginning after the 31st day of March, 1944, be an amount equal to sixty-six and two-thirds per cent. of the amount by which the profits of the business during that chargeable accounting period exceed the standard profits.

XV of 1940. 8. (1) In sub-rule (1) of rule 2 of the Second Schedule to the Excess Profits Tax Act, 1940,—

Further
provisions
respecting
excess
profits tax.

(a) for the words "and in particular any debt for income-tax or super-tax or for excess profits tax in respect of the business shall be deducted" the following shall be substituted, namely:—

XI of 1922. "and in particular there shall be deducted any debts incurred in respect of the business for income-tax or super-tax or excess profits tax, or for advance payments due under any provision of the Indian Income-tax Act, 1922, or for any further sum payable in relation to excess profits tax under section 2 of the Excess Profits Tax Ordinance, 1943;

XVI of
1943.

(b) after clause (b) of the proviso the following clauses shall be inserted, namely:—

XI of 1922. "(c) in the case of any advance payment due under any provision of the Indian Income-tax Act, 1922, on the date on which, under the provisions of that section, the payment first became due;

¹Supplemented by a 7(8) of the Indian Finance Act, 1945.
21st March, 1947, see Gazette of India, 1946, Pt. I, p. 635.

(d) in the case of any further sum payable in relation to excess profits tax under section 2 of the Excess Profits tax Ordinance, 1943, on the date on which, under the provisions of that section, the further sum became payable". XVI of 1943.

(2) To sub-section (1) of section 10 of the Indian Finance Act, 1942, the following proviso shall be added, namely:— XII of 1942.

“Provided further that in respect of chargeable accounting periods ending after the 31st day of December, 1943, the amount repayable under this sub-section shall, subject to the provisions of the first of the foregoing provisos, be calculated by reference to the amount of the excess profits tax paid, and not by reference to the further amount deposited under this section”.

(3) In section 2 of the Excess Profits Tax Ordinance, 1943,— XVI of 1943

(a) to sub-section (1) the following provisions shall be added, namely:—

“Provided that, in respect of any chargeable accounting period ending after the 31st day of December, 1943, the provisions of this sub-section shall have effect as if, in relation to any person who is a company, for the words ‘one-fifth’ the words ‘nineteen-sixtyfourths’ were substituted and as if, in relation to any other person, for the words ‘one-fifth’ the words ‘seventeen-sixty-fourths’ were substituted:

Provided further that if, in respect of any chargeable accounting period ending after the 31st day of December, 1943, a person who has deposited a further sum equal to seventeen-sixtyfourths of the excess profits tax payable shows that the amount of the income-tax and super-tax payable in respect of the excess profits arising in such period exceeds fifteen-sixtyfourths of the amount of the excess profits tax payable, so much of the deposit shall be refunded as will secure that the total of the deposit made and the income-tax and super-tax payable in respect of the excess profits arising in such period does not exceed one-half of the excess profits tax payable”;

(b) after sub-section (1) the following sub-section shall be inserted, namely:—

“(1A) In respect of any chargeable accounting period ending after the 31st day of December, 1943, in respect of which a provisional assessment of excess profits tax is made under section 14A of the Excess Profits Tax Act, 1940, the person liable to pay such excess profits tax shall deposit in the manner laid down in sub-section (1) a further sum equal to nineteen-sixtyfourths of the amount of the said excess profits tax if such person is a company and seventeen-sixtyfourths of the said amount if such person is not a company; and the provisions of sub-sections (6) and (7) of the said section 14A shall apply to any payment made under this sub-section as they apply to a payment of excess profits tax”; XV of 1940.

- (c) in sub-section (4) for the words, brackets and figure "sub-section (I) of this section", where they occur for the first time, the words, brackets, figures and letter "sub-section (I) or (I.1) of this section" shall be substituted.

THE FIRST SCHEDULE.

(See section 5.)

1 of 1944.

Amendments to be made in the Central Excises and Salt Act, 1944.

PART I.

Amendments of FIRST SCHEDULE.

1. For Item No. 9, the following item shall be substituted, namely:—

9. TOBACCO—

"Tobacco" means any form of tobacco, whether cured or uncured, and whether manufactured or not, and includes the leaf, stalk and stems of the tobacco plant but does not include any part of a tobacco plant while still attached to the earth.

I. Unmanufactured tobacco—

- (1) if flue-cured and intended for—

(a) manufacture into cigarettes containing—

- (i) more than 20 per cent. weight of imported tobacco

Per lb.

Three rupees and eight annas.

- (ii) 20 per cent. or less than 20 per cent. weight of imported tobacco

Two rupees and eight annas.

- (iii) no imported tobacco

One rupee.

- (b) any purpose other than the manufacture of cigarettes or of the products enumerated in s(a) and s(b)

Three rupees and eight annas.

- (2) if other than flue-cured and intended for—

(a) manufacture into cigarettes

Nine annas.

- (b) any purpose other than the manufacture of cigarettes or of the products enumerated in s(a) and s(b)

Nine annas.

- (3) whether flue-cured or not, if intended for—

(a) manufacture into—

- (i) biris

Nine annas.

- (ii) snuff

Nine annas.

- (iii) cigars and cheroots

Three annas.

- (iv) hookah tobacco

Three annas.

- (b) sale as chewing tobacco, whether manufactured or merely cured

Three annas.

- (c) agricultural purposes

Nil.

- (4) Stalks, stems and other refuse of tobacco intended for use in the preparation of any form of manufactured tobacco

One anna.

II. Manufactured tobacco—

Cigars and cheroots of which the value—

Per hundred.

- (i) exceeds Rs. 30 a hundred

Twelve rupees.

- (ii) exceeds Rs. 25 a hundred but does not exceed Rs. 30 a hundred

Ten rupees.

- (iii) exceeds Rs. 20 a hundred but does not exceed Rs. 25 a hundred

Eight rupees.

- (iv) exceeds Rs. 15 a hundred but does not exceed Rs. 20 a hundred Per hundred.
 (v) exceeds Rs. 10 a hundred but does not exceed Rs. 15 a hundred Six rupees.
 (vi) exceeds Rs. 5 a hundred but does not exceed Rs. 10 a hundred Four rupees.
 (vii) exceeds Rs. 2-8 a hundred but does not exceed Rs. 5 a hundred Two rupees.
 (viii) exceeds Rs. 1-4 a hundred but does not exceed Rs. 2-8 a hundred One rupee.
 (ix) exceeds Annas 12 a hundred but does not exceed Rs. 1-4 a hundred Eight annas.
 Four annas.
2. After item No. 11, the following items shall be added, namely:—
12. BETEL-NUTS, cured—
 "Betel-nut" means the fruit of the areca-palm (*areca catechu*), whether with or without husk, whether cured or uncured, but does not include the fruit while still attached to the tree Two annas per lb.
13. COFFEE, cured—
 "Coffee" means the seed of the coffee tree (*coffea*), whether with or without husk, whether cured or uncured, but does not include the seed while still attached to the tree Two annas per lb.
14. TEA—
 "Tea" means the commodity known as tea made from the leaves of the plant (*Camellia Thea* (Linn)) and includes green tea Two annas per lb.

PART II.

Amendment of SECOND SCHEDULE.

In PART A after Item No. 1 (Tobacco) the following shall be added, namely:—

2. Betel-nuts | When supplied by a curer to a wholesale dealer, whether directly
 3. Coffee. | or through a broker or commission agent".

THE SECOND SCHEDULE.

25. 5.

(See section 6.)

PART I.

Rates of Income-tax.

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons not being a case to which paragraph B of this Part applies:—

- | | Rate. | Surcharge. |
|---|---------------------------------------|-------------------------------------|
| 1. On the first Rs. 1,500 of total income | Nil. | Nil. |
| 2. On the next Rs. 3,500 of total income | Nine pies in the rupee. | Six pies in the rupee. |
| 3. On the next Rs. 5,000 of total income | One anna and three pies in the rupee. | Ten pies in the rupee. |
| 4. On the next Rs. 5,000 of total income | Two annas in the rupee. | One anna and six pies in the rupee. |
| 5. On the balance of total income | Two annas and six pies in the rupee. | Two annas in the rupee. |

Provided that,—

- (i) no income-tax shall be payable on a total income which does not exceed Rs. 2,000;
- (ii) the income-tax payable shall in no case exceed half the amount by which the total income exceeds Rs. 2,000.

B.—In the case of every company and local authority, and in every case in which under the provisions of the Indian Income-tax Act, 1922, income-tax is to be charged at the maximum rate—

	Rate.	Surcharge.
On the whole of total income.	Two annas and six pies in the rupee.	Two annas in the rupee.

PART II.

Rates of Super-tax.

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which paragraphs B and C of this Part apply—

	Rate.	Surcharge.
1. On the first Rs. 25,000 of total income	Nil.	Nil.
2. On the next Rs. 10,000 of total income	One anna in the rupee.	One anna in the rupee.
3. On the next Rs. 20,000 of total income	Two annas in the rupee.	Two annas in the rupee.
4. On the next Rs. 70,000 of total income	Three annas in the rupee.	Two annas and six pies in the rupee.
5. On the next Rs. 75,000 of total income	Four annas in the rupee.	Three annas in the rupee.
6. On the next Rs. 1,50,000 of total income	Five annas in the rupee.	Three annas in the rupee.
7. On the next Rs. 1,50,000 of total income	Six annas in the rupee.	Three annas in the rupee.
8. On the balance of total income	Seven annas in the rupee.	Three annas and six pies in the rupee.

B.—In the case of every local authority—

	Rate.	Surcharge.
On the whole of total income.	One anna in the rupee.	One anna in the rupee.

C.—In the case of an association of persons being a co-operative society, other than the Sanikatta Saltowners' Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1912, or under an Act of the Provincial Legislature governing the registration of Co-operative Societies—

	Rate.	Surcharge.
1. On the first Rs. 25,000 of total income	Nil.	Nil.
2. On the balance of total income	One anna in the rupee.	One anna in the rupee.

D.—In the case of every company—

	Rate.
On the whole of total income.	Three annas in the rupee.

Provided that a rebate of one anna in the rupee shall be allowed on the total income as reduced by the amount of any dividend declared in 1[the Provinces] in respect of 2[the whole or part of the previous year] for the assessment for the year ending on the 31st day of March, 1945, not being a dividend payable at a fixed rate or a dividend declared on or before the 29th day of February, 1944, by a company to which but for sub-section (8) of section 6 of this Act, section 23A of the Indian Income-tax Act, 1922, would be applicable

XI of 1922.

¹ Subs. by the A.O. 1948 for "British India".

² Subs. by s. 2 of the Indian Finance (Amendment) Ordinance, 1944 (33 of 1944) (retrospectively) for "the profits of the previous year".

[*Explanation.*—For the purposes of this proviso, the expression “dividend” shall be deemed to include any distribution included in the expression “dividend” as defined in clause (61) of section 2 of the Indian Income-tax Act, 1922, and any such distribution made during the year ending on the 31st day of March, 1945, shall be deemed to have been made in respect of the whole or part of the previous year.]

THE INDIAN FINANCE ACT, 1945

[29th March, 1945.]

An Act to give effect to the financial proposals of the Central Government for the year beginning on the 1st day of April, 1945.

WHEREAS it is expedient to fix the duty on salt manufactured in, or imported by land into, ^{VI of 1898.} ~~the Provinces~~, to fix maximum rates of postage under the Indian Post Office Act, 1898, to continue for a further period of one year the additional duties of customs imposed by section 6 of the Indian Finance Act, 1942, and to modify certain ^{XII of 1942.} of those duties, to alter the duty of customs and the duty of excise on tobacco, to fix rates of income-tax and super-tax, and to continue the charge and levy of excess profits tax;

It is hereby enacted as follows:—

Short title
and extent

1. (7) This Act may be called the Indian Finance Act, 1945.

(2) It extends to ^{whole} ~~all the Provinces of India~~ ^{except its territories to which} ~~immediately before the 15th Nov. 45 were comprised in Part B States~~

Fixation of
salt duty.

2. The duty on salt manufactured in, or imported by land into, ^{VI of 1898.} ~~the Provinces~~ shall, for the year beginning on the 1st day of April, 1945, be at the rate of one rupee and nine annas per standard maund.

Inland
postage
rates.

3. For the year beginning on the 1st day of April, 1945, the Schedule contained in the First Schedule to this Act shall be inserted in the Indian Post Office Act, 1898, as the First Schedule to that Act. ^{VI of 1898.}

Continuation of, and
enhancement of,
additional
duties of
customs
imposed by
section 6,
Act XII of
1942.

4. (1) The additional duties of customs on certain goods chargeable with a duty of customs under the First Schedule to the Indian Tariff Act, 1934, or under the said Schedule read with any notification of the Central Government for the time being in force, imposed up to the 31st day of March, 1943, by section 6 of the Indian Finance Act, 1942, and continued, subject to certain modifications, up to the 31st day of March, 1945, by section 4 of the Indian Finance Act, 1944, shall continue to be levied and collected as provided in section 6 of the Indian Finance Act, 1942, up to the 31st day of March, 1946, subject to the modifications contained in sub-section (2). ^{XXXII of 1934.} ^{XII of 1942.} ^{XII of 1942.}

¹ Ins. by s. 2 of the Indian Finance (Amendment) Ordinance, 1944 ((33 of 1944) retrospectively).

² This Act was made by the Governor General under s. 67B of the Government of India Act as set out in the Ninth Schedule to the Government of India Act, 1935. No number was given to this Act.

For the Statement of Objects and Reasons, see Gazette of India, 1945, Pt. V, p. 27.

This Act has been applied to all the partially excluded areas of the Province of Orissa, see Orissa Government notification No. 2499-F-Tax-7/45-F., dated 16th April, 1945.

³ Subst. by the A.O. 1945 for “British India”.

⁴ Subst. by the A.O. 1945 for “the whole of British India”.

XXXII of
1934.

(2) The additional duty to be levied and collected under the foregoing sub-section shall be one-half instead of one-fifth of the amount of the duty of customs specified in the First Schedule to the Indian Tariff Act, 1934, in the case of spirits, comprised in Item No. 22 (4) and in sub-items (a), (c) and (d) of Item No. 22 (5) of the said Schedule; and no such additional duty shall be levied or collected on tobacco comprised in Items Nos. 24, 24 (1), 24 (2) and 24 (3) of the said Schedule [for, after the 28th day of February 1946, on kerosene and mineral oils, comprised in Items Nos. 27(4) and 27(5) of the said Schedule].

XXXII of
1934.

5. In the First Schedule to the Indian Tariff Act, 1934,—

Alteration
of duty of
customs on
tobacco.

- (a) in Item No. 24, for the entry in the fourth column the entry "Rs. 8 per lb." shall be substituted;
- (b) in Item No. 24 (1), for the entry in the fourth column the following shall be substituted, namely:—
"The rate at which duty is for the time being leviable on articles included in Item No. 87 of this Schedule under this Act read with any other enactment in force, *plus* Rs. 7-8 per lb.";
- (c) in Item No. 24 (2), for the entry in the fourth column the following shall be substituted, namely:—
"The rate at which duty is for the time being leviable on articles included in Item No. 87 of this Schedule under this Act read with any other enactment in force *plus* Rs. 18-12 per thousand or Rs. 7-8 per lb. whichever is higher.";
- (d) in Item No. 24 (3), for the entries in the fourth and sixth columns, respectively, the entries "Rs. 7-8 per lb." and "Rs. 7 per lb." shall be substituted.

1 of 1944.

6. In the First Schedule to the Central Excises and Salt Act, 1944, in Item No. 9, under the heading "I. Unmanufactured tobacco",—

Alteration
of duty of
excise on
tobacco.

(a) for the entries (i), (ii) and (iii) contained in sub-item 1) beginning—

"(1) if flue-cured and intended for—

(a) manufacture into cigarettes containing—

the following shall be substituted, namely—

	Per lb.
"(i) more than 60 per cent. weight of imported tobacco	Seven rupees and eight annas.
(ii) more than 40 per cent, but not more than 60 per cent. weight of imported tobacco.	Five rupees.
(iii) more than 20 per cent. but more than 40 per cent. weight of imported tobacco.	Three rupees and eight annas.
(iv) 20 per cent. or less than 20 per cent. weight of imported tobacco.	Two rupees and eight annas.
(v) no imported tobacco.	One rupee";
and in the second column of clause (b) of that sub-item, for the words "Three rupees and eight annas" the words "Seven rupees and eight annas" shall be substituted:	

(b) in sub-item (4), the word "stems" shall be omitted.

income-tax
and super-
tax.

7. (1) Subject to the provisions of sub-sections (3), (4) and (5),—

(a) income-tax for the year beginning on the 1st day of April, 1945, shall be charged at the rates specified in Part I of the Second Schedule increased in each case by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of income-tax, and

(b) rates of super-tax for the year beginning on the 1st day of April, 1945, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be those specified in Part II of the Second Schedule increased in the cases to which paragraphs A, B and C of that Part apply by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of super-tax. XI of 1922,

(2) If any provision is made in the Indian Income-tax Act, 1922, for the exemption from income-tax of a portion of the earned income included in the total income of an assessee, then, in making any assessment for the year ending on the 31st day of March, 1946, there shall be deducted from the total income of an assessee in accordance with such provision an amount equal to one-tenth of such earned income exclusive of any income chargeable under the head "Salaries" but not exceeding in any case two thousand rupees. XI of 1922,

(3) In making any assessment for the year ending on the 31st day of March, 1946, where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" or under the head "Interest on Securities" or any income from dividends in respect of which he is deemed under section 49B of the Indian Income-tax Act, 1922, to have paid income-tax imposed in [the Provinces], the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1944, on his total income the same proportion as the amount of such inclusions bears to his total income. XI of 1922,

(4) In making any assessment for the year ending on the 31st day of March, 1946,—

(a) where the total income of a company includes any profits and gains from life insurance business, the super-tax payable by the company on that part of its total income which consists of such inclusion shall be at the rate of six pice in the rupee;

(b) where the total income of an assessee, not being a company, includes any profits and gains from life insurance business, the income-tax and super-tax payable by the assessee on that part of his total income which consists of such

¹ Subs. by the A.O. 1946 for "British India",

XII of
1942.

XII of
1942.

inclusion shall be an amount bearing to the total amount of such taxes payable according to the rates applicable under the operation of the Indian Finance Act, 1942, on his total income the same proportion as the amount of such inclusion bears to his total income, so, however, that if the aggregate of the taxes so computed in respect of such inclusion exceeds the aggregate of the taxes on the same income payable by a company under the operation of the Indian Finance Act, 1942, the taxes payable on such inclusion shall be computed at the rates applicable to a company under the operation of the said Act.

XI of 1922,

(5) In cases to which section 17 of the Indian Income-tax Act, 1922, applies, the tax chargeable shall be determined as provided in that section but with reference to the rates imposed by sub-section (1) of this section, and in accordance with the provisions of sub-sections (2) and (4) of this section where applicable.

XI of 1922.

(6) For the purposes of this section and of the rates of tax imposed thereby, the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922; and the expression "earned income" means earned income as defined for the purposes of the said Act.

XI of 1922.

(7) Where the total income of an assessee referred to in paragraph A of Part I of the Second Schedule does not exceed six thousand rupees, an amount representing one rupee for every complete unit of two hundred rupees of his total income as reduced by the income, if any, exempt from tax under any provision of the Indian Income-tax Act, 1922, or any notification issued thereunder shall be funded for the assessee's benefit and shall be paid to him on such date not more than twelve months after the termination of the present hostilities, as the Central Government may fix:

Provided that the amount to be funded for the assessee's benefit shall in no case exceed two-fifths of the tax payable by him.

Explanation.—In computing the amount to be funded under this sub-section if there is an incomplete unit amounting to one hundred rupees or more it shall be reckoned as a complete unit of two hundred rupees.

(8) Notwithstanding anything contained in sub-section (7) of section 6 of the Indian Finance Act, 1944, the amount to be funded for the assessee's benefit under the provisions of that sub-section shall in no case exceed two-fifths of the amount of tax payable by him in respect of his assessment for the year ending on the 31st day of March, 1945.

XI of 1922.

(9) The provisions of section 23A of the Indian Income-tax Act, 1922, shall not apply in respect of profits and gains of the previous year for the assessment for the year ending on the 31st day of March, 1946.

Continu-
ance of and
rate of
excess
profits tax,

8. (1) In sub-clause (a) of clause (6) of section 2 of the Excess Profits Tax Act, 1940, for the words and figures "31st day of March, 1945," the words and figures "31st day of March, 1946" shall be substituted. XV of 1940.

(2) The excess profits tax imposed by section 4 of the Excess Profits Tax Act, 1940, shall, in respect of any chargeable accounting period beginning after the 31st day of March, 1945, be an amount equal to sixty-six and two-thirds per cent. of the amount by which the profits of the business during that chargeable accounting period exceed the standard profits. XV of 1940,

THE FIRST SCHEDULE

Schedule to be inserted in the Indian Post Office Act, 1898.

(See section 3)

"THE FIRST SCHEDULE

INLAND POSTAGE RATES

(See section 7.)

Letters

For a weight not exceeding one tola One and a half annas.
For every tola, or fraction thereof, exceeding one tola One anna.

Postcards

Single Nine pies.
Reply One and a half annas.

Book, Pattern and Sample Packets

For the first five tolas or fraction thereof Nine pies.
For every additional two and a half tolas, or fraction there-
of, in excess of five tolas Three pies.

Registered Newspapers

For a weight not exceeding ten tolas Quarter of an anna.
For a weight exceeding ten tolas and not exceeding twenty
tolas Half an anna.
For every twenty tolas, or fraction thereof, exceeding
twenty tolas Half an anna.
In the case of more than one copy of the same issue of a re-
gistered newspaper being carried in the same packet—
For a weight not exceeding ten tolas Half an anna.
For every additional five tolas, or fraction thereof,
in excess of ten tolas Quarter of an anna.
Provided that such packet shall not be delivered at
any addressee's residence but shall be given to a
recognised agent at the post office.

Parcels

For a weight not exceeding forty tolas Six annas.
For every forty tolas, or fraction thereof, exceeding forty
tolas Six annas."

THE SECOND SCHEDULE

(See section 7)

PART I.

Rates of Income-tax.

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons not being a case to which paragraph B of this Part applies:—

	Rate	Surcharge
1. On the first Rs. 1,500 of total income	Nil.	Nil.
2. On the next Rs. 3,500 of total income	Nine pies in the rupee.	Six pies in the rupee.
3. On the next Rs. 5,000 of total income	One anna and three pies in the rupee.	Ten pies in the rupee.
4. On the next Rs. 5,000 of total income	Two annas in the rupee.	One anna and six pies in the rupee.
5. On the balance of total income	Two annas and six pies in the rupee.	Two annas and three pies in the rupee.

Provided that—

- (i) no income-tax shall be payable on a total income which, before deduction of the allowance, if any, for earned income, does not exceed Rs. 2,000;
- (ii) the income-tax payable shall in no case exceed half the amount by which the total income (before deduction of the said allowance, if any, for earned income) exceeds Rs. 2,000;
- (iii) the income-tax payable on the total income as reduced by the allowance for earned income shall not exceed either—
 - (a) a sum bearing to half the amount by which the total income (before deduction of the allowance for earned income) exceeds Rs. 2,000 the same proportion as such reduced total income bears to the unreduced total income,
 - or
 - (b) the income-tax payable on the income so reduced at the rates specified in this Schedule,
 whichever is less.

B.—In the case of every company and local authority, and in every case in which under the provisions of the Indian Income-tax Act, 1922, income-tax is to be charged at the maximum rate—

	Rate	Surcharge
On the whole of total income	Two annas and six pies in the rupee.	Two annas and three pies in the rupee.

PART II.

Rates of Super-tax.

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which paragraphs B and C of this Part apply—

	Rate	Surcharge
1. On the first Rs. 25,000 of total income .	Nil.	Nil.
2. On the next Rs. 10,000 of total income .	One anna in the rupee.	One anna in the rupee.
3. On the next Rs. 20,000 of total income .	Two annas in the rupee.	Two annas in the rupee.
4. On the next Rs. 70,000 of total income .	Three annas in the rupee.	Two annas and six pies in the rupee.
5. On the next Rs. 75,000 of total income .	Four annas in the rupee.	Three annas in the rupee.
6. On the next Rs. 1,50,000 of total income .	Five annas in the rupee.	Three annas in the rupee.
7. On the next Rs. 1,50,000 of total income .	Six annas in the rupee.	Three annas in the rupee.
8. On the balance of total income . . .	Seven annas in the rupee.	Three annas and six pies in the rupee.

	Rate	Surcharge
B.—In the case of every local authority—		
On the whole of total income	One anna in the rupee.	One anna in the rupee.

C.—In the case of an association of persons being a co-operative society, other than the Sanikatta Saltowners' Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1912, or under an Act of the Provincial Legislature governing the registration of Co-operative Societies—

	Rate	Surcharge
1. On the first Rs. 25,000 of total income .	Nil.	Nil.
2. On the balance of total income	One anna in the rupee.	One anna in the rupee.

D.—In the case of every company—

	Rate
On the whole of total income	Three annas in the rupee:

Provided that a rebate of one anna in the rupee shall be allowed on the total income as reduced by the amount of any dividend declared in ¹[the Provinces] in respect of the whole or part of the previous year for the assessment for the year ending² on the 31st day of March, 1946, not being a dividend payable at a fixed rate.

Explanation.—For the purposes of this proviso, the expression 'dividend' shall be deemed to include any distribution included in the expression 'dividend' as defined in clause (64) of section 2 of the Indian Income-tax Act, 1922, and any such distribution made during the year ending on the 31st day of March, 1946, shall be deemed to have been made in respect of the whole or part of the previous year.

THE INDIAN FINANCE ACT, 1946.

²ACT No. VII of 1946.

An Act to give effect to the financial proposals of the Central Government for the year beginning on the 1st day of April 1946.

[30th March, 1946]

WHEREAS it is expedient to fix ^{India}the duty on salt manufactured in, or imported by land into, ^{India}the Provinces, to fix maximum rates of postage under the Indian Post Office Act, 1898, to continue, subject to certain modifications, for a further period of one year the additional duties of customs imposed by section 6 of the Indian Finance Act, 1942, to alter the duty of customs on cinematograph films, raw cotton and

VI of 1898.

XII of 1942.

¹ Subs. by the A.O. 1948 for "British India".

² For Statement of Objects and Reasons, see Gazette of India, 1946, Pt. V. p. 48.

VIII of 1942.

silver, to withdraw the duty of customs on raw cotton levied under the Cotton Fund Ordinance, 1942, to impose a duty of customs on gold, to alter the duty of customs and the duty of excise on betelnuts, motor spirit, kerosene and mineral oils, to fix rates of income-tax and super-tax, and to make certain provisions relating to income-tax, super-tax and excess profits tax;

It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Finance Act, 1946. Short title and extent.

(2) It extends to ^{whole} ~~all the Provinces of India.~~ ^{except the territories which} Fixation of salt duty.

2. The duty on salt manufactured in, or imported by land into, ^{immediately before 1st Nov. 56 were comprised in Part B States} ~~the Provinces~~ shall, for the year beginning on the 1st day of April 1946, be at the rate of one rupee and nine annas per standard maund.

VI of 1898.

3. For the year beginning on the 1st day of April 1946, the Schedule contained in the First Schedule to the Indian Finance Act, 1945, shall again be inserted in the Indian Post Office Act, 1898, as the First Schedule to that Act. Inland postage rates.

4. (1) To sub-section (2) of section 4 of the Indian Finance Act, 1945, the following shall be added, namely:— Amendment of section 4, Indian Finance Act, 1945.

“or, after the 28th day of February 1946, on kerosene and mineral oils, comprised in Items Nos. 27(4) and 27(5) of the said Schedule”.

(2) The provisions of this section shall be deemed to have come into force on the 28th day of February 1946.

XXXI of 1934.

5. (1) The additional duties of customs on certain goods chargeable with a duty of customs under the First Schedule to the Indian Tariff Act, 1934, or under the said Schedule read with any notification of the Central Government for the time being in force, imposed up to the 31st day of March 1943 by section 6 of the Indian Finance Act, 1942, and continued, subject to certain modifications, up to the 31st day of March 1946, by section 4 of the Indian Finance Act, 1945, as amended by section 4 of this Act, shall continue to be levied and collected as provided in the said section 6 up to the 31st day of March 1947, subject to the aforesaid modifications and to the further modifications contained in sub-section (2). Continuation of, and enhancement of, additional duties of customs imposed by section 6, Act XII of 1942.

(2) The additional duty to be levied and collected under sub-section (1) shall be one-half instead of one-fifth of the amount of the duty of customs specified in the First Schedule to the Indian Tariff Act, 1934, in the case of wines, comprised in Item No. 22(3) of the said Schedule; and no such additional duty shall be levied or collected on—

(a) betelnuts, comprised in Item No. 9(5),

(b) cinematograph films, not exposed and exposed, comprised in Items Nos. 29 and 29(1),

(c) raw cotton, comprised in Item No. 46(3),

1 Subs. by the A.O. 1948, for “the whole of British India”.

2 Subs. by the A.O. 1948 for “British India”.

(d) silver bullion and silver sheets and plates which have undergone no process of manufacture subsequent to rolling, and silver coin, not otherwise specified, comprised in Items Nos. 61(2) and 62(1),

(e) gold bullion and gold sheets and plates which have undergone no process of manufacture subsequent to rolling, and gold coin, comprised in Items Nos. 61(3) and 62(2), of the said Schedule.

Imposition and alteration of certain duties of customs.

6. In the First Schedule to the Indian Tariff Act, 1934,—

XXXII of 1934,

(a) in Item No. 9(5), for the entries in the fourth and sixth columns, the entries "Five annas per lb." and "Four annas and six pies per lb." shall be respectively substituted;

(b) in Item No. 29, for the entry in the fourth column, the entry "Three pies per linear foot" shall be substituted;

(c) in Item No. 29(1), for the entry in the fourth column, the entry "Four annas per linear foot" shall be substituted;

(d) in Item No. 46(3), for the entry in the fourth column, the entry "Two annas per lb." shall be substituted;

(e) in Items Nos. 61(2) and 62(1), in the fourth column, for the word "Three" the word "Eight" shall be substituted;

(f) in Items Nos. 61(3) and 62(2),—

(i) in the third column the word "Revenue" shall be inserted, and

(ii) for the entry in the fourth column, the following entry shall be substituted, namely:—

"Rs. 25 per tola of 180 grains fine."

Alteration of duty of customs on kerosene and mineral oils,

7. In the First Schedule to the Indian Tariff Act, 1934, in Items XXXII of 1934, Nos. 27(4) and 27(5), in the fourth column, the words 'and nine pies' shall be omitted.

Alteration of duty of excise on motor spirit.

8. (1) In the First Schedule to the Central Excises and Salt Act, 1944, in Item No. 4, for the word "Fifteen" the word "Twelve" shall be substituted. I of 1944.

(2) The provisions of this section shall be deemed to have come into force on the 1st day of March 1946.

Alteration of excise on betelnuts.

9. In the First Schedule to the Central Excises and Salt Act, 1944, in Item No. 12, for the words "Two annas" the words "One anna" shall be substituted. I of 1944.

Repeal of Ordinance VIII of 1932.

10. The Cotton Fund Ordinance, 1942, is hereby repealed:

Provided that the repeal of the said Ordinance shall not prejudice the power of the Central Government to utilise the balance at the credit

of the fund established thereunder for the purposes set out in section 3 of that Ordinance.

11. (1) Subject to the provisions of sub-sections (3), (4), (5), (6) and (7),—

(a) income-tax for the year beginning on the 1st day of April 1946 shall be charged at the rates specified in Part I of the Schedule, and

(b) rates of super-tax for the year beginning on the 1st day of April 1946 shall, for the purposes of section 55 of the Indian Income-tax Act, 1922 be those specified in Part II of the Schedule.

XI of 1922.

(2) In making any assessment for the year ending on the 31st day of March 1947, there shall be deducted from the total income of an assessee, in accordance with the provisions of section 15A of the Indian Income-tax Act, 1922, an amount equal to—

(i) one-tenth of the earned income chargeable under the head “Salaries” which is included in his total income, subject to a maximum of two thousand rupees, plus

(ii) one-fifth of the earned income other than the income chargeable under the head “Salaries” which is included in his total income:

Provided that the aggregate amount to be deducted under this sub-section shall not in any case exceed four thousand rupees.

(3) In making any assessment for the year ending on the 31st day of March 1947,—

(a) where the total income of an assessee, not being a company, includes any income chargeable under the head “Salaries” as reduced by the deduction for earned income appropriate thereto, or any income chargeable under the head “Interest on Securities”, or any income from dividends in respect of which he is deemed under section 49B of the Indian Income-tax Act, 1922, to have paid income-tax imposed in ~~the Provinces~~ ^{the}, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1945, on his total income the same proportion as the amount of such inclusions bears to his total income;

(b) where the total income of an assessee, not being a company, includes any income chargeable under the head “Salaries” on which super-tax has been or might have been deducted under the provisions of sub-section (2) of section 18 of the Indian Income-tax Act, 1922, the super-tax payable by the assessee on that portion of his total income which consists of such inclusion shall be an amount bearing to the total

¹ Subs. by the A.O. 1948 for “British India”.

amount of super-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1945, on his total income the same proportion as the amount of such inclusion bears to his total income.

(4) In making any assessment for the year ending on the 31st day of March 1947, where the total income of an assessee consists partly of earned income and partly of unearned income, the super-tax payable by him shall be—

- (i) on that part of the earned income chargeable under the head "Salaries" to which clause (b) of sub-section (3) applies, the amount of super-tax computed in accordance with the provisions of that clause, plus
- (ii) on the remainder of the earned income, the amount which bears to the total amount of super-tax which would have been payable on his total income had it consisted wholly of earned income the same proportion as such remainder bears to his total income, plus
- (iii) on the unearned income, the amount which bears to the total amount of super-tax which would have been payable on his total income had it consisted wholly of unearned income the same proportion as the unearned income bears to his total income.

(5) Where the total income of an assessee referred to in paragraph A of Part I of the Schedule does not exceed six thousand rupees and includes any income to which clause (a) of sub-section (3) applies, the income-tax payable by the assessee on such inclusion as computed in accordance with the provisions of that clause shall be reduced by an amount representing one rupee for every complete unit of two hundred rupees of such inclusion as reduced by the amount of income, if any, exempt under the second proviso to sub-section (1) of section 7, section 15 and sub-section (1) of section 58F, of the Indian Income-tax Act, 1922 :

Provided that the reduction to be made under this sub-section shall not in any case exceed two-fifths of the income-tax otherwise payable on such inclusion :

Provided further that if there is an incomplete unit of such inclusion amounting to one hundred rupees or more, it shall for the purposes of this sub-section be reckoned as a complete unit of two hundred rupees.

(6) In making any assessment for the year ending on the 31st day of March 1947,—

- (a) where the total income of a company includes any profits and gains from life insurance business, the super-tax payable by the company shall be reduced by an amount computed at the rate of one anna in the rupee on that part of its total income which consists of such inclusion;

(b) where the total income of an assessee, not being a company, includes any profits and gains from life insurance business, the income-tax and super-tax payable by the assessee or that part of his total income which consists of such inclusion shall be an amount bearing to the total amount of such taxes payable according to the rates applicable under the operation of the Indian Finance Act, 1942, on his total income the same proportion as the amount of such inclusion bears to his total income, so however that the aggregate of the taxes so computed in respect of such inclusion shall not in any case exceed the amount of tax payable on such inclusion at the rate of five annas in the rupee.

XII of 1942.

(7) In cases to which section 17 of the Indian Income-tax Act, 1922 applies, the tax chargeable shall be determined as provided in that section but with reference to the rates imposed by sub-section (1) of this section and in accordance, where applicable, with the provisions of sub-sections (3), (4), (5) and (6) of this section.

(8) For the purposes of making any deduction of income-tax in the year beginning on the 1st day of April 1946, under sub-section (2) or sub-section (2B) of section 18 of the Indian Income-tax Act, 1922, from any earned income chargeable under the head "Salaries", the estimated total income of the assessee under this head shall, in computing the income-tax to be deducted, be reduced by an amount equal to one-fifth of such earned income but not exceeding in any case four thousand rupees.

(9) For the purposes of this section and of the rates of tax imposed thereby, the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922, and the expression "earned income" has the meaning assigned to it in clause (64A) of section 2 of that Act.

(10) If any provision is made in the Indian Income-tax Act, 1922, for the allowance of expenditure on scientific research related to the business carried on by an assessee, then any such expenditure incurred by him in the previous year for the assessment for the year ending on the 31st day of March 1946, shall, for the purposes of that provision and in accordance therewith, be deemed to be expenditure incurred in the previous year for the assessment for the year ending on the 31st day of March 1947, and shall be added to the amount of such expenditure, if any, in that previous year.

(11) Any sum being excess profits tax repaid in respect of any chargeable accounting period under the provisions of section 10 of the Indian Finance Act, 1942, or of section 2 of the Excess Profits Tax Ordinance, 1943 shall be deemed to be income for the purposes of the Indian Income-tax Act, 1922, and shall, notwithstanding the provisions of section 34 of that Act, be treated as income of the previous year which constitutes or includes the chargeable accounting period in respect of which the said sum is repayable:

XVI of
1943.

Provided that any such sum repaid in respect of any profits which

provided that where, subsequent to any repayment made under the provisions of section 10 of the Indian Finance Act 1942 (XII of 1942) or section 2 of the Excess Profits Tax Ordinance, 1943 (XVI of 1943), a reduction in the excess profits tax is effected whether by relief, given in respect of a deficiency of profits, or by relief given in respect of a double excess profits tax, or by an order passed in any appeal, or otherwise the sum to be refunded to the assessee on account of such reduction shall be decreased by such proportion thereof as the amount already repaid bears to the excess profits tax before the reduction as aforesaid.

LXVII 49 .

SECTION.

(14) Where under the provisions of sub-section (2) of section 12 of the Excess Profits Tax Act, 1940, excess profits tax payable under the law in force in the United Kingdom has been deducted in computing for the purposes of income-tax and super-tax the profits and gains of any business, the amount of any repayment under sub-section (1) of section 28 of the Finance Act, 1941, as amended by section 37 of the Finance Act, 1942, in respect of those profits, shall be deemed to be income for the purposes of the Indian Income-tax Act, 1922, and shall, for the purpose of assessment to income-tax and super-tax, be treated as income of the previous year during which the repayment is made. XV of 1940.

12. If any provision is made in clause (vi) of sub-section (2) of section 10 of the Indian Income-tax Act, 1922, to allow in respect of depreciation a further sum which is not deductible in determining the written down value, then such sum shall not be included in the allowances made in computing profits for the purposes of the Excess Profits Tax Act, 1940. XI of 1922.

13. (1) To sub-section (1) of section 10 of the Indian Finance Act, 1942, the following further proviso shall be added, namely:— XV of 1940.

Amendment
of section
10, Act XII
of 1942.

“Provided further that no such further sum herein referred to shall be deposited with the Central Government after the 28th day of February 1946.”

(2) The provisions of this section shall be deemed to have come into force on the 28th day of February 1946.

THE SCHEDULE.

(See section 11)

PART I

Rates of Income-tax.

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons not being a case to which paragraph B of this Part applies—

	Rate
1. On the first Rs. 1,500 of total income—	Nil.
2. On the next Rs. 3,500 of total income—	One anna in the rupee.
3. On the next Rs. 5,000 of total income—	Two annas in the rupee.
4. On the next Rs. 5,000 of total income—	Three and a half annas in the rupee.
5. On the balance of total income—	Five annas in the rupee:

Provided that—

(i) no income-tax shall be payable on a total income which, before deduction of the allowance, if any, for earned income, does not exceed Rs. 2,000;

(ii) the income-tax payable shall in no case exceed half the amount by which the total income (before deduction of the said allowance, if any, for earned income) exceeds Rs. 2,000;

(iii) the income-tax payable on the total income as reduced by the allowance for earned income shall not exceed either—

(a) a sum bearing to half the amount by which the total income (before deduction of the allowance for earned income) exceeds Rs. 2,000 the same proportion as such reduced total income bears to the unreduced total income, or

(b) the income-tax payable on the income so reduced at the rates specified in this Schedule,

whichever is less.

B.—In the case of every company and local authority, and in every case in which under the provisions of the Indian Income-tax Act, 1922, income-tax is to be charged at the maximum rate—

	Rate
On the whole of total income.....	Five annas in the rupee.

PART II

Rates of Super-tax.

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which paragraph B or paragraph C or paragraph D of this Part applies—

	Rate, if income wholly earned.	Rate, if income wholly unearned.
1. On the first Rs. 25,000 of total income	Nil.	Nil.
2. On the next Rs. 10,000 of total income	Two annas in the rupee.	Three annas in the rupee.
3. On the next Rs. 10,000 of total income	Three annas in the rupee.	Four annas in the rupee.
4. On the next Rs. 15,000 of total income	Four annas in the rupee.	Five annas in the rupee.
5. On the next Rs. 20,000 of total income	Five annas in the rupee.	Six annas in the rupee.
6. On the next Rs. 30,000 of total income	Six annas in the rupee.	Seven annas in the rupee.
7. On the next Rs. 40,000 of total income	Seven annas in the rupee.	Eight annas in the rupee.
8. On the next Rs. 50,000 of total income	Eight annas in the rupee.	Nine annas in the rupee.
9. On the next Rs. 50,000 of total income	Nine annas in the rupee.	Nine and a half annas in the rupee.
10. On the next Rs. 1,00,000 of total income	Nine and a half annas in the rupee.	Ten annas in the rupee.
11. On the next Rs. 1,50,000 of total income	Ten annas in the rupee.	Ten and a half annas in the rupee.
12. On the balance of total income	Ten and a half annas in the rupee.	Ten and a half annas in the rupee.

B.—In the case of every local authority—

Rate

On the whole of total income.....One anna in the rupee.

C.—In the case of an association of persons being a co-operative society, other than the Sanikatta Saltowners' Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1912, or under an Act of the Provincial Legislature governing the registration of co-operative societies—

Rate

1. On the first Rs. 25,000 of total income.....Nil.
2. On the balance of total income.....One anna in the rupee.

D.—In the case of every company—

Rate

On the whole total income.....One anna in the rupee,
and in addition, in respect of that part of the total income (as reduced
by the amount of dividends payable at a fixed rate) which does not ex-
ceed the amount of dividends, not being dividends payable at a fixed
rate, declared in [the Provinces] in respect of the whole or part of the

¹ Subs. by the A.O. 1948 for "British India".

previous year for the assessment for the year ending on the 31st day of March 1947,—

on the amount by which such part—

	Rate
(a) exceeds 30 per cent., but does not exceed 40 per cent., of the total income as so reduced.	Two annas in the rupee.
(b) exceeds 40 per cent., but does not exceed 45 per cent., of the total income as so reduced.	Three annas in the rupee.
(c) exceeds 45 per cent., but does not exceed 50 per cent., of the total income as so reduced.	
(d) exceeds 50 per cent., but does not exceed 55 per cent., of the total income as so reduced.	Five annas in the rupee.
(e) exceeds 55 per cent., but does not exceed 60 per cent., of the total income as so reduced.	Six annas in the rupee.
(f) exceeds 60 per cent., of the total income as so reduced.	Seven annas in the rupee.

Provided that—

- (i) no additional super-tax shall be payable where such part is less than, or equal to, five per cent. on the capital of the company;
- (ii) where such part is more than five per cent. on the capital of the company, the additional super-tax payable shall be reduced by the amount of additional super-tax which would, but for the provisions of clause (i) of this proviso, have been payable had such part been equal to five per cent. on the capital of the company;
- (iii) where any dividends (not being dividends payable at a fixed rate) have been declared before the 1st day of March 1946 in respect of the whole or part of the previous year for the assessment for the year ending on the 31st day of March 1947, and the amount of super-tax computed at the rates set out in this paragraph exceeds the amount of super-tax which would be payable by the company at the rate specified in the Indian Finance Act, 1945, such proportion of the amount of super-tax computed under this paragraph as the amount of dividends declared before the 1st day of March 1946 bears to the total amount of dividends declared in respect of the said previous year (not being dividends payable at a fixed rate) shall be so reduced as not to exceed the same proportion of the super-tax computed at the rate specified in the Indian Finance Act, 1945;
- (iv) the additional super-tax shall be payable only by a company in which the public are substantially interested within the meaning of the *Explanation* to sub-section (1) of section 23A of the Indian Income-tax Act, 1922, or a subsidiary company of such a company where the whole

of the share capital of such subsidiary company is held by the parent company or by the nominees thereof.

Explanation.—For the purposes of this paragraph,—

- (a) the expression “capital of the company” shall be deemed to mean the paid-up share capital at the beginning of the previous year for the assessment for the year ending on the 31st day of March 1947 (other than capital entitled to a dividend at a fixed rate) plus any reserves other than depreciation reserves and reserves for bad or doubtful debts at the same date as diminished by the amount on deposit on the same date with the Central Government under section 10 of the Indian Finance Act, 1942, or section 2 of the Excess Profits Tax Ordinance, 1943;
- (b) the expression “dividend” shall be deemed to include any distribution included in the expression “dividend” as defined in clause (64) of section 2 of the Indian Income-tax Act, 1922, and any such distribution made during the year ending on the 31st day of March 1947 shall be deemed to have been made in respect of the whole or part of the previous year;
- (c) where any portion of the profits and gains of a company is not included in its total income, by reason of such portion being exempt from tax under any provision of the Indian Income-tax Act, 1922, the capital of the company, the total amount of dividends and the amount of dividends payable at a fixed rate shall each be deemed to be the proportion thereof that the total income of the company bears to its total profits and gains.

THE INDIAN OILSEEDS COMMITTEE ACT, 1946.

¹Act No. IX of 1946

[18th April, 1946.]

An Act to provide for the creation of a fund to be expended by a Committee specially constituted for the improvement and development of the cultivation and marketing of oilseeds and of the production, manufacture and marketing of oilseed products.

WHEREAS it is expedient to provide for the creation of a fund to be expended by a Committee specially constituted in this behalf for the improvement and development of the cultivation and marketing of oilseeds and of the production, manufacture and marketing of oilseed products;

It is hereby enacted as follows:—

1. (1) This Act may be called the Indian ^(Central) Oilseeds Committee Act, 1946.

¹For Statement of Objects and Reasons, see Gazette of India, 1946, Pt. V, p. 27; for Report of Select Committee, see *ibid.*, p. 131.

"(2) It extends to the whole of India;

Provided that it shall not apply to the State of Jammu and Kashmir except to the extent to which the provisions of this Act relate to the levy and collection of the duty of excise and the duty of customs specified therein.

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purposes of clause (g) of section 4;

- (b) "Collector" means the officer appointed by the Central Government to perform in any specified area the duties of a Collector under the provisions of this Act and the rules made thereunder, and includes any officer subordinate to that officer whom he may by order in writing authorise to perform his duties under those provisions;
- (c) "the Committee" means the Indian Oilseeds Committee constituted under this Act;
- (d) "Fund" means the Oilseeds Improvement Fund.

(f) "mill" means any premises in which or in any part of which oilseeds are crushed or are ordinarily crushed with the aid of power;

XXV of
1934.

Explanation: "Power" means electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal agency;

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There shall be levied and collected on and after the date of the commencement of this Act as cesses for the purposes of this Act,—

Imposition
of oilseeds
cess.

- (a) on all oils extracted from oilseeds crushed in any mill in ~~the Provinces~~, whether the oilseeds are produced in or imported from outside ~~the Provinces~~, a duty of excise at the rate of one anna per maund, and
- (b) on all oilseeds exported out of ~~the Provinces~~ to a destination outside India, a duty of customs at the rate of two annas per maund:

Provided that the Central Government may from time to time and after consulting the Committee fix by notification in the official Gazette a lesser rate at which the duty of excise or duty of customs shall be levied and collected:

Provided further that no such duty of customs shall be levied on any oilseeds exported under a contract for export entered into before the aforesaid date.

(2) On the last day of each month, or as soon thereafter as may be convenient, the proceeds of the duties recovered during that month shall, after deduction of the expenses, if any, of collection and recovery,

¹ Subs. by the A.O. 1948, for "the whole of British India",

² Subs. by the A.O. 1948 for "British India",

be paid to the Committee and the Committee shall credit the said proceeds and any other monies received by it to a fund to be called the Oilseeds Improvement Fund.

Constitution
of Indian
Oilseeds
Committee.

4. As soon as may be after the commencement of this Act, the Central Government shall cause to be constituted a Committee consisting of the following members, to receive for credit to the Fund the proceeds of the duties and to administer the Fund, namely:—

(i) for clauses (a) to (g) inclusive, the following clauses shall be substituted, namely:--

- (a) the Vice-president, Indian Council of Agricultural Research;
- (b) the Agricultural Commissioner with the Govt. of India;
- (c) the Agricultural Marketing Adviser with the Government of India;
- (d) two persons representing, respectively, the Ministry of Commerce and Industry and the Ministry of Food and Agriculture of the Central Government, to be appointed by the Central Government;
- (e) ten persons representing the Governments of Andhra Pradesh, Bihar, Bombay, Madhya Pradesh, Madras Mysore, Punjab Rajasthan, Uttar Pradesh and West Bengal, one each to be nominated by the State Government concerned;
- (f) seventeen persons being growers, who shall be nominated after consulting the approved growers' associations in the State, as follows.:-

(i) omitted.

(ii) three each by the Government of Bombay and Uttar Pradesh,

(iii) two each by the Governments of Andhra Pradesh, Madras and Madhya Pradesh,

(iv) one each by the Governments of Bihar, Punjab West Bengal, Mysore and Rajasthan.

Provided that where there are for the time being no approved growers' associations concerned, the Government shall, before making any nomination under this clause, consult the associations of growers, or associations the majority of whose members are growers, if any, in the State concerned.

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- (h) one person having experience of the co-operative movement to be appointed by the Central Government;
- (i) one oilseed technologist to be nominated by the Oil Technologists Association, ~~Cannanore, Kanpur~~ LXVIII/52
- (j) three persons representing the village oilseed crushing industry to be appointed by the Central Government after consulting ~~Provincial~~ ^{State} Governments;
- (k) one person representing the vanaspati industry to be appointed by the Central Government after consulting the appropriate commercial associations;
- (l) two persons representing the power oilseed crushing industry to be appointed by the Central Government after consulting the appropriate commercial associations;
- (m) two persons representing exporters of oilseeds and oilseed products to be appointed by the Central Government after consulting the appropriate trade associations, other than those referred to in clauses (n), ^{and} (o) and (p); LXVIII/52
- (n) one person representing the Federation of Indian Chambers of Commerce and Industry to be nominated by that body;
- (o) one person representing the Associated Chambers of Commerce to be nominated by that body;
- (p) ~~one person representing the Federation of Muslim Chambers of Commerce to be nominated by that body;~~
- (q) one person representing the Federation of Rural Peoples' Organisations to be nominated by that body;
- (r) four persons representing the oilseeds trade associations to be

"(s) six persons representing consumers of oilseed products, of whom four shall be elected from among themselves by the members of the House of the People and two from among themselves by the members of the Council of States;"

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~~... may appoint to represent interests not otherwise represented.~~

5. The Committee shall be a body corporate by the name of the Indian Oilseeds Committee, having perpetual succession and a common seal with power to acquire and hold property, both moveable and immoveable and to contract, and shall by the said name sue and be sued.

Incorporation of the Committee.

6. (1) If, within the period prescribed in this behalf, or within such further period as the Central Government may allow, any authority or body fails to make any nomination or election which it is entitled to make under section 4, the Central Government may itself appoint a member to fill the vacancy in the Committee.

Vacancies.

¹ Subs. by the A.O. 1948 for the original clause.

(2) Where a member of the Committee dies, resigns or is removed, or ceases to reside in India or becomes incapable of acting, the Central Government may, on the recommendation of the authority or body which was entitled to make the first nomination or election under section 4, or where such recommendation is not made within a reasonable time, then on its own initiative, appoint a person to fill the vacancy.

(3) N-

President
of Commit-
tee,
Secretary,
sub-commi-
tees and
staff.

(1) The Central Government may appoint any of the persons referred to in section 4 or any other person to be the president of the Committee, and if any other person is so appointed that other person shall be deemed to be a member of the committee for all the purposes of this Act.

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(3) The Committee may appoint such sub-committees and staff as may be necessary for the efficient performance of its functions under this Act.

Appoint-
ment of
officers.

8. The Central Government may, on the recommendation of the Committee, appoint an officer or officers, to discharge under the direction of the Committee such duties as may be prescribed, and such officer or officers shall be paid by the Committee such salary and allowances as may be fixed by the Central Government.

Application
of Fund.

9. (1) The Committee shall apply the Fund to meeting the expenses of the Committee and the cost of such measures as it may consider necessary or expedient to take for the improvement and development of the cultivation and marketing of oilseeds and of the production, utilisation and marketing of oilseed products.

(2) Without prejudice to the generality of the foregoing power, the Committee may utilise the Fund to defray expenditure involved in—

- (a) undertaking, assisting or encouraging agricultural, industrial, technological and economic research, including research into the food-value of oilseeds and oilseed products;
- (b) supplying technical advice to growers and millers;
- (c) encouraging the adoption of improved methods of cultivation and storage of oilseeds;
- (d) producing, testing and distributing improved varieties of oilseeds or assisting such work;
- (e) assisting in the control of insect and other pests and diseases of oilseeds both in the field and in storage;
- (f) promoting the improvement of the marketing of oilseeds and their products including the setting up and adoption of grade standards for oilseeds and their products;

- (g) collecting statistics from growers, dealers and millers on all relevant matters and promoting improvement in the forecasting of oilseed crops and the preparation of all relevant statistics relating to oilseeds and oilseed products;
- (h) maintaining, and assisting in the maintenance of, such institutes, farms and stations as it may consider necessary;
- (i) advising and providing assistance on all matters connected with the improvement of the cultivation of oilseeds (including advising on the best and most suitable varieties of oilseeds to be cultivated) and the improvement of the industries using oilseeds or their products;
- (j) promoting and encouraging the co-operative movement in the oilseeds industry;
- (k) adopting such measures as may be practicable for assuring remunerative returns to growers;
- (l) organising the establishment of growers', millers' and consumers' associations;
- (m) aiding and encouraging the establishment of exhibitions for demonstrating the uses of oilseeds and oilseed products;
- (n) adopting any other measures or performing any other duties which it may be required by the Central Government to adopt or perform or which the Committee may itself think necessary or advisable in order to carry out the purposes of this Act.

10. (1) The owner of every mill shall furnish to the Collector, on or before the 7th day of each month, a return stating the total amount of oils extracted in the mill during the preceding month, together with such further information in regard thereto as may be prescribed.

Delivery
of monthly
returns.

Provided that no return shall be required in regard to oils extracted before the commencement of this Act.

(2) Every such return shall be made in such form and shall be verified in such manner as may be prescribed.

11. (1) On receiving any return made under section 10, the Collector shall assess the amount of the duty of excise payable under section 3 in respect of the period to which the return relates, and if the amount has not already been paid, shall cause a notice to be served upon the owner of the mill requiring him to make payment of the amount assessed within thirty days of the service of the notice.

Collection
of duty of
excise.

(2) If the owner of any mill fails to furnish in due time the return referred to in sub-section (1) of section 10 or furnishes a return which the Collector has reason to believe is incorrect or defective, the Collector shall assess the amount, if any, payable by him in such manner as may be prescribed, and the provisions of sub-section (1) shall thereupon apply as if such assessment had been made on the basis of a return furnished by the owner.

Provided that, in the case of a return which he has reason to believe is incorrect or defective, the Collector shall not assess the duty of excise at an amount higher than that at which it is assessable on the basis of the return without giving to the owner a reasonable opportunity of proving the correctness and completeness of the return.

(3) A notice under sub-section (1) may be served on the owner of a mill either by post or by delivering it or tendering it to the owner or his agent at the mill.

Finality of
assessment
and
recovery of
unpaid
duty of
excise.

12. (1) Any owner of a mill who is aggrieved by an assessment made under section 11 may, within three months of service of the notice referred to in sub-section (1) of that section, apply to the District Judge, or in a Presidency-town, to the Chief Judge of the Small Cause Court for the cancellation or modification of the assessment and, on such application, the said Judge may cancel or modify the assessment and order the refund to such owner of the whole or part, as the case may be, of any amount paid thereunder.

(2) The decision under sub-section (1) of the District Judge or the Chief Judge of the Small Cause Court, as the case may be, shall be final.

(3) Any sum recoverable under section 11 may be recovered as an arrear of land-revenue.

Power to
inspect
mills and
take copies
of records
and
accounts

13. (1) The Collector or any officer empowered by general or special order of the Central Government in this behalf shall have free access at all reasonable times during working hours to any mill or to any part of any mill.

(2) The Collector or any such officer may, at any time during working hours, with or without notice to the owner, examine the purchase, sale and stock records and accounts of any mill and take copies of or extracts from all or any of the said records or accounts for the purpose of testing the accuracy of any return or of informing himself as to the particulars regarding which information is required for the purposes of this Act or any rules made thereunder:

Provided that nothing in this section shall be deemed to authorise the examination of any description or formulae of any trade process.

Informa-
tion
acquired
to be
confiden-
tial.

14. (1) All such copies and extracts and all information acquired by a Collector or any other officer from an inspection of any mill or warehouse or from any return submitted under this Act shall be treated as confidential.

(2) If the Collector or any such officer discloses to any person other than a superior officer any such information as aforesaid without the previous sanction of the Central Government, he shall be punishable with imprisonment which may extend to six months and shall also be liable to fine:

Provided that nothing in this section shall apply to the disclosure of any such information for the purposes of a prosecution in respect of the making of a false return under this Act.

15. (1) The Committee shall publish an annual report and shall keep accounts of all duty and other monies received by it under this Act and of the manner in which the Fund is expended and shall also publish a summary of the accounts along with the annual report.

Keeping
and
auditing of
accounts.

(2) Such accounts shall be examined and audited annually in the prescribed manner, and the auditors shall have power to disallow any item which has been, in their opinion, expended otherwise than in pursuance of the purposes of this Act.

(3) If any item is disallowed, an appeal shall lie to the Central Government whose decision shall be final.

16. The Central Government may, with the previous approval of ^{1* **} the Central Legislature, by notification in the official Gazette, declare that, with effect from such date as may be specified in the notification, the Committee shall be dissolved, and on the making of such declaration all funds and other property vested in the Committee shall vest in His Majesty for the purposes of the Central Government and this Act shall be deemed to have been repealed.

Dissolution
of Commit-
tee.

17. (1) The Central Government may, after previous publication, make rules for the purpose of carrying into effect the provisions of this Act.

Power of
the Central
Govern-
ment to
make
rules.

(2) In particular and without prejudice to the generality of the foregoing power; such rules may provide for all or any of the following matters, namely:—

- (a) for prescribing the time within which nominations or elections shall be made under section 4 whether in the first instance or on the occurrence of vacancies;
- (b) for prescribing the term of office of the members of the Committee;
- (c) for prescribing the circumstances in which and the authority by which any member may be removed;
- (d) for prescribing the quorum of the Committee;
- (e) for the holding of a minimum number of meetings of the Committee during any year;
- (f) for the maintenance by the Committee of a record of all business transacted and the submission of copies of such records to the Central Government;
- (g) for the definition of the powers of the Committee to enter into contracts which shall be binding on the Committee, and the manner in which such contracts shall be executed;
- (h) for the regulation of the travelling allowances of members of the Committee and of their remuneration, if any;

¹ The words "both Chambers of" were rep. by the A.O. 1948.

² For such rules, see Gazette of India, 1948, Pt. I, p. 507.

- (i) for the definition of the powers of the Committee, in respect of the appointment, promotion and dismissal of officers and servants of the Committee, and in respect of the creation and abolition of appointments of such officers or servants;
- (j) for the regulation of the grant of pay (which shall not, except in the case of a person having specialist's qualifications, exceed two thousand rupees per mensem) and leave to officers and servants of the Committee, and the payment of leave allowances to such officers and servants, and the remuneration to be paid to any person appointed to act for any officer or servant to whom leave is granted;
- (k) for the regulation of the payment of pensions, gratuities, compassionate allowances and travelling allowances to officers and servants of the Committee;
- (l) for prescribing the establishment and maintenance of a provident fund for the officers and servants of the Committee, and for the deduction of subscriptions to such provident fund from the pay and allowances of such officers and servants, other than Government servants whose services have been lent or transferred to the Committee;
- (m) for prescribing the preparation of budget estimates of the annual receipts and expenditure of the Fund and of supplementary estimates of expenditure not included in the budget estimates, and the manner in which such estimates shall be sanctioned and published;
- (n) for defining the powers of the Committee, the Standing Finance Sub-Committee, if any, and the President, respectively, in regard to the expenditure from the Fund whether provision has or has not been made in the budget estimates or by re-appropriation for such expenditure, and in regard to the re-appropriation of estimated savings in the budget estimates of expenditure;
- (o) for prescribing the maintenance of accounts of the receipts and expenditure of the Fund and providing for the audit of such accounts;
- (p) for prescribing the manner in which payments are to be made by or on behalf of the Committee, and the officers by whom orders for making deposits or investments or for withdrawals or disposal of the funds of the Committee shall be signed;
- (q) for determining the custody in which the current account of the Fund shall be kept, and the bank or banks at which surplus monies at the credit of the Fund may be deposited at interest, and the conditions on which such monies may be otherwise invested;
- (r) for prescribing the preparation of a statement showing the sums allotted to Departments of Agriculture and Indus-

tries or institutions not under the direct control of the Committee for expenditure on research, the actual expenditure incurred, the outstanding liabilities, if any, and the disposal of unexpended balances at the end of the year;

- (s) for prescribing the duties of the officers appointed under section 8, and the powers and duties of the Secretary of the Committee;
- (t) for prescribing the manner in which any amount of duty paid in excess may be refunded;
- (u) any other matter which is to be or may be prescribed.

18. The Committee may, with the previous sanction of the Central Government, make regulations consistent with this Act and with any rules made under section 17 to provide for all or any of the following matters, namely:—

Power of the Committee to make regulations,

- (a) the appointment of a Standing Finance Sub-Committee or other Sub-Committee and the delegation thereto of any powers exercisable under this Act by the Committee;
- (b) the method of appointment, removal and replacement and the term of office of members of the Sub-Committees, and for the filling of vacancies therein;
- (c) the dates, times and places for meetings of the Committee and the Sub-Committees and the procedure to be observed at such meetings;
- (d) the circumstances in which security may be demanded from officers and servants of the Committee, and the amount and nature of such security in each case;
- (e) the times at which, and the circumstances in which, payments may be made out of the provident fund and the conditions on which such payments shall relieve the fund from further liability;
- (f) the contribution, if any, payable from the funds of the Committee to the provident fund;
- (g) generally all matters incidental to the provident fund and the investment thereof.

19. All rules made under section 17 and all regulations made under section 18 shall be published in the Gazette of India.

Publication of rules and regulations,

THE RAILWAY COMPANIES (SUBSTITUTION OF PARTIES IN CIVIL PROCEEDINGS) ACT, 1946.

¹Act No. XIV of 1946.

[18th April, 1946.]

An Act to provide for the substitution of the Governor-General in Council for certain Railway Companies in certain civil proceedings.

WHEREAS under certain arrangements made by the Central Government with the Bengal-Nagpur Railway Company, Limited, the Bombay, Baroda and Central India Railway Company, the Bengal and North Western Railway Company, Limited, and the Rohilkhand and Kumaon Railway Company, Limited, certain rights and liabilities of the said Companies have been assumed by the Central Government;

AND WHEREAS it is expedient to provide for the substitution of the Governor-General in Council in the place and stead of the said Companies in all pending civil proceedings founded on any right or liability so assumed by the Central Government:

It is hereby enacted as follows:—

Short title. 1. This Act may be called the Railway Companies (Substitution of Parties in Civil Proceedings) Act, 1946.

Interpretation. 2. In this Act, "civil proceeding" includes an appeal or execution proceeding.

Substitution of Governor General in Council in certain civil proceedings. 3. (1) In every civil proceeding pending at the commencement of this Act to which the Bengal-Nagpur Railway Company, Limited, or the Bombay, Baroda and Central India Railway Company, or the Bengal and North Western Railway Company, Limited, or the Rohilkhand and Kumaon Railway Company, Limited, is a party, and which is founded on any right or liability assumed by the Central Government under certain arrangements made by the Central Government with the said Companies, the Governor General in Council shall, notwithstanding anything to the contrary in the Code of Civil Procedure, 1908, be deemed to be substituted in the place and stead of the Company; and every such proceeding may be continued by or against the Governor-General in Council accordingly, and the Company shall be discharged from all liability in connection with the proceeding.

V of 1908.

(2) References in sub-section (1) to any Company shall be construed as including references to the liquidators of that Company.

¹ For Statement of Objects and Reasons, see Gazette of India, 1946, Pt. V, p. 64.

THE PROTECTIVE DUTIES ACT, 1946.

¹Act No. XVII of 1946.

[18th April, 1946.]

An Act to enable the immediate imposition of protective duties of customs on imported goods.

WHEREAS it is expedient to enable the Central Government to impose with immediate effect protective duties of customs on goods produced or manufactured outside India and imported into ²[the Provinces] where such imposition is urgently necessary in the interests of industries established in ²[the Provinces];

It is hereby enacted as follows:—

1. (1) This Act may be called the Protective Duties Act, 1946.

Short title,
extent and
duration.

(2) It extends to ³[all the Provinces of India].

(3) It shall remain in force until the 31st day of March 1949.

2. (1) If the Central Government, upon a recommendation made to it in this behalf by the Tariff Board set up under the Resolution of the Government of India in the Department of Commerce, No. 218-T(55)/45, dated the 3rd November 1945, is of opinion that it is urgently necessary to provide for the protection of the interests of any industry established in ⁴[the Provinces], the Central Government may, by notification in the official Gazette, impose on any goods, produced or manufactured in any country outside India and imported into ²[the Provinces] in respect of which the said recommendation is made, a duty of customs of such amount, not exceeding the amount, if any, proposed in the said recommendation, as it thinks fit.

Power of
Central
Govern-
ment to
impose
duties of
customs.

XXXII of
1934.

XII of 1942.

(2) Every duty imposed under sub-section (1) shall be deemed to be a duty leviable under the Indian Tariff Act, 1934, and shall be in addition to any duties imposed under that Act or any other law for the time being in force, but shall not be included in the duty of customs upon which any additional duty imposed by section 6 of the Indian Finance Act, 1942 and continued, subject to certain modifications, by certain subsequent Acts of the Central Legislature, is calculated, or operate so as in any way to affect the amount of any additional duty so imposed.

3. During the session of the Central Legislature next following the date of the issue of a notification under sub-section (1) of section 2, there shall, unless the notification is in the meantime rescinded, be introduced in the Central Legislature on behalf of the Central Government a Bill to give effect to the proposals of the Central Government in regard to the continuance of a protective duty of customs on the goods to which the notification relates, and the notification shall cease to have effect on the expiry of two months from the date on which the Bill is so introduced:

Duties to
be con-
tinued by
legislation.

Provided that where for any reason a Bill as aforesaid is not so introduced the notification shall cease to have effect on the expiry of two months from the termination of the said session.

4. (1) The Central Government may, by notification in the official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

Power to
make rules.

¹ For Statement of Objects and Reasons, see Gazette of India, 1946, Pt. V., p. 148.

² Subs. by the A.O. 1948 for "British India."

³ Subs. by the A.O. 1948 for "the whole of British India".

Hindu Married Women's Right to [1946 : Act XIX.
Separate Residence and Maintenance.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe the conditions subject to which any goods shall be deemed to be produced or manufactured in a particular country for the purposes of this Act.

THE HINDU MARRIED WOMEN'S RIGHT TO
 SEPARATE RESIDENCE AND
 MAINTENANCE ACT, 1946.

¹Act No. XIX of 1946.

[23rd April, 1946.]

An Act to give Hindu married women a right to separate residence and maintenance under certain circumstances.

WHEREAS it is expedient to provide for the right to separate residence and maintenance under certain circumstances in the case of Hindu married women;

It is hereby enacted as follows:—

Short title
and extent,

1. (1) This Act may be called the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946.

(2) It applies to ^{whole} ~~all~~ the Provinces of India ^{except part B states}

Grounds
for claiming
separate
residence
and
mainte-
nance.

2. Notwithstanding any custom or law to the contrary a Hindu married woman shall be entitled to separate residence and maintenance from her husband on one or more of the following grounds, namely,—

- (1) if he is suffering from any loathsome disease not contracted from her;
- (2) if he is guilty of such cruelty towards her as renders it unsafe or undesirable for her to live with him;
- (3) if he is guilty of desertion, that is to say, of abandoning her without her consent or against her wish;
- (4) if he marries again;
- (5) if he ceases to be a Hindu by conversion to another religion;
- (6) if he keeps a concubine in the house or habitually resides with a concubine;
- (7) for any other justifiable cause:

Provided that a Hindu married woman shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by change to another religion or fails without sufficient cause to comply with a decree of a competent Court for the restitution of conjugal rights.

Amount of
mainte-
nance.

3. When allowing a claim for separate residence and maintenance under section 2, the Court shall determine the amount to be paid by the husband to the wife therefor, and in so doing shall have regard to the social standing of the parties and the extent of the husband's means.

¹ For Statement of Objects and Reasons, see Gazette of India, 1946, Pt. V., p. 94; for Report of Select Committee, see *ibid.* p. 140.

² *Ibid.* by the A.O. 1948, for "the whole of British India".

THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT. 1946.

¹Act No. XX of 1946.

[23rd April, 1946.]

An Act to require employers in industrial establishments formally to define conditions of employment under them.

WHEREAS it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them;

It is hereby enacted as follows:—

1. (1) This Act may be called the Industrial Employment (Standing Orders) Act, 1946.

Short title,
extent and
application.

(2) It extends to ~~all the Provinces~~ ^{Whole} of India ~~except the State of~~ ^{Jammu & Kashmir}

11/51

(3) It applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months, and to such class or classes of other industrial establishments as the appropriate Government may from time to time, by notification in the official Gazette, specify in this behalf:

Bombay
Act XXV
of 1938.

Provided that nothing in this Act shall apply to any industry to which, before the commencement of this Act, the provisions of Chapter V of the Bombay Industrial Disputes Act, 1938 have been applied.

2. In this Act, unless there is anything repugnant in the subject or context,—

Interpreta-
tion.

(a) “appellate authority” means an Industrial Court, wherever it exists or in its absence an authority appointed by the appropriate Government by notification in the official Gazette to exercise in such area as may be specified in the notification the functions of an appellate authority under this Act;

administration

(b) “appropriate Government” means in respect of industrial establishments under the control of the Central Government or a ~~Federal~~ railway, or in a major port, mine or oil-field, the Central Government, and in all other cases, the ~~Provincial~~ ^{State} Government;

(c) “Certifying Officer” means the Labour Commissioner wherever he exists, or in his absence an officer appointed by the appropriate Government by notification in the official Gazette to exercise in such area as may be specified in the notification the functions of a Certifying Officer under this Act;

¹ For Statement of Objects and Reasons, see Gazette of India, 1946, Pt. V, p. 179.

² Subs. by the A.O. 1948, for “the whole of British India”.

(d) "employer" means the owner of an industrial establishment to which this Act for the time being applies, and includes--

XXV of
1934,

(i) in a factory, any person named under clause (e) of subsection (I) of section 9 of the Factories Act, 1934, as manager of the factory;

(ii) in any industrial establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf, or where no authority is so appointed, the head of the department;

(iii) in any other industrial establishment, any person respon-

(i) 'workman' means any person (including an apprentice) employed in any industrial establishment to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person--

IV of 1936

(i) who is subject to the Army Act, 1950, or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934; or

IX of 189

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the office or by reason of the powers vested in him, functions mainly of a managerial nature;

XVI of
1926,

36/56.

5. (1) Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment.

Submission
of draft
standing
orders.

(2) Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model.

(3) The draft standing orders submitted under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.

(4) Subject to such conditions as may be prescribed, a group of employers in similar industrial establishments may submit a joint draft of standing orders under this section.

4. Standing orders shall be certifiable under this Act if—

Conditions
for certification of
standing orders.

(a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and

(b) the standing orders are otherwise in conformity with the provisions of this Act;

and it shall ~~not~~ be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

36/57

5. (1) On receipt of the draft under section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice.

Certification of
standing orders.

(2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act and shall make an order in writing accordingly.

(3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications therein which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen.

6. (1) Any person aggrieved by the order of the Certifying Officer under sub-section (2) of section 5 may, within twenty-one days from the date on which copies are sent under sub-section (3) of that section, appeal to the appellate authority, and the appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions thereto as it thinks necessary to render the standing orders certifiable under this Act.

Appeals.

(2) The appellate authority shall, within seven days of its order under sub-section (1), send copies thereof of the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen, accompanied, unless it has confirmed without amendment the standing orders as certified by the Certifying Officer, by copies of the standing orders as certified by it and authenticated in the prescribed manner.

Date of operation of standing orders.

7. Standing orders shall, unless an appeal is preferred under section 6, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under sub-section (3) of section 5, or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent under sub-section (2) of section 6.

Register of standing orders.

8. A copy of all standing orders as finally certified under this Act shall be filed by the Certifying Officer in a register in the prescribed form maintained for the purpose, and the Certifying Officer shall furnish a copy thereof to any person applying therefor on payment of the prescribed fee.

Posting of standing orders.

9. The text of the standing orders as finally certified under this Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed.

Duration and modification of standing orders.

10. (1) Standing orders finally certified under this Act shall not

(2) Subject to the provisions of sub-section (1), an employer or workman may apply to the Certifying Officer to have the standing orders modified, and such application shall be accompanied by five copies of the standing orders in which shall be indicated the modifications proposed to be made by agreement between the employer and the workmen, a certified copy of that agreement shall be filled along with the application.

36/56.

Certifying officers and appellate authorities to have powers of Civil Court.

11. Every Certifying Officer and appellate authority shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

V of 1898.

Oral evidence in contradiction of standing orders not admissible.

12. No oral evidence having the effect of adding to or otherwise varying or contradicting standing orders as finally certified under this Act shall be admitted in any Court.

Penalties and procedure.

13. (1) An employer who fails to submit draft standing orders as required by section 3, or who modifies his standing orders, otherwise than in accordance with section 10, shall be punishable with fine which may extend to five thousand rupees, and in the case of a continuing offence with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.

(2) An employer who does any act in contravention of the standing orders finally certified under this Act for his industrial establishment shall be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during

13A. Interpretation, etc. of standing orders..
If any question arises as to the application or interpretation of a standing order certified under this Act, any employer or workman may refer the question to any one of the labour Courts constituted under the Industrial Disputes Act, 1947, and specified for the disposal of such proceeding by the appropriate Government by notification in the official Gazette, and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties.

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e rules.

13B. Act not to apply to certain Industrial establishments.- Nothing in this Act shall apply to an industrial establishment in so far as the workman employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification Control and Appeal) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Govt. in the Official Gazette apply,

36/56.

Provided that before any rules are made under clause (a) representatives of both employers and workmen shall be consulted by the appropriate Government.

THE SCHEDULE.

[See sections 2 (g) and 3 (2).]

Matters to be provided in Standing Orders under this Act.

1. Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers, or *badlis*.

2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.

¹ For such Notifications see Gazette of India, 1946, Pt. I, pp. 129, 590, 704 and 1507.

² For such Rules, see *ibid.*, p. 1921.

3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying for, and the authority which may grant, leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. Closing and reopening of sections of the industrial establishment, and temporary stoppages of work and the rights and liabilities of the employer and workmen arising therefrom.
8. Termination of employment, and the notice thereof to be given by employer and workmen.
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
11. Any other matter which may be prescribed.

THE MERCHANT SEAMEN (LITIGATION) ACT, 1946.

¹Act No. XXI of 1946.

An Act to provide for the special protection in respect of civil and revenue litigation of serving merchant seamen.

WHEREAS it is expedient to provide for special protection in respect of civil and revenue litigation of serving merchant seamen;

It is hereby enacted as follows:—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Merchant Seamen (Litigation) Act, 1946.

(2) It extends to ^{whole} ~~all the Provinces of India.~~ ^{except the territories immediately before the 1st Nov. 56 were comprised in Part B States.}

(3) It shall come into force on such ^{date} as the Central Government may, by notification in the official Gazette, appoint.

Interpreta-
tion.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) “agreement” means articles of agreement entered into by a seaman whereby he engages himself to serve on board a sea-going ship;

(b) “Court” means a Civil or Revenue Court;

¹ For Statement of Objects and Reasons, see Gazette of India, 1946, Pt. V., p. 129; for Report of Select Committee, see *ibid* p. 181.

² Subs. by the A.O. 1948 for “the whole of British India.”

³ The Act has not yet been brought into force.

(c) "master" means a person, other than a pilot or harbour master, having command or charge of a sea-going ship;

(d) "prescribed" means prescribed by rules made under this Act;

(e) "proceeding" includes any suit, appeal or application;

(f) "seaman" means every person, other than a person subject to naval law,

who is employed or engaged under an agreement on board any sea-going ship in any capacity, other than that of pilot or apprentice but including that of master;

(g) "shipping master" means, in relation to any seaman, a shipping master appointed—

(i) for the port at which the seaman entered into, or is believed to have entered into, an agreement, or

(ii) where the seaman did not enter into his agreement in ^{this Act extends} ~~the Provinces~~ for the port to which the seaman has returned, or is expected to return, on the completion of his latest voyage,

and includes a deputy shipping master or any person carrying out the functions of a shipping master.

(2) For the purposes of this Act a seaman shall be deemed to be a serving seaman during any period commencing on the date on which he enters into an agreement and ending thirty days after the date on which he is finally discharged from such agreement.

3. If any person presenting any plaint, application or appeal to any Court has reason to believe that any adverse party is a serving seaman, he shall make a statement accordingly in the plaint, application or appeal.

Particulars to be furnished in plaints, etc.

4. If any Collector has reason to believe that any seaman who ordinarily resides or has property in his district and who is a party to any proceeding pending before any Court, is unable to appear therein or is a serving seaman, the Collector may certify the facts in the prescribed manner to the Court.

Power of Collector to intervene in case of unrepresented seaman.

5. (1) If a Collector has certified under section 4, or if a Court has reason to believe, that a seaman who is a party to any proceeding before the Court, is unable to appear therein or is a serving seaman, the Court shall suspend the proceeding and shall give notice thereof in the prescribed manner to the shipping master:

Notice to be given in case of unrepresented seaman.

Provided that the Court may refrain from suspending the proceeding and giving the notice—

(a) if the proceeding is one instituted or made by the seaman, alone or conjointly with others, with the object of enforcing a right of pre-emption, or

¹ Subs. by the A.O. 1948 for "British India".

- (b) if the interests of the seaman in the proceeding are, in the opinion of the Court, either identical with those of any other party thereto and adequately represented by such other party, or merely of a formal nature.

(2) If it appears to the Court before which any proceeding is pending that a seaman though not a party to the proceeding is materially concerned in the out-come of the proceeding and that his interests are likely to be prejudiced by his inability to attend, the Court may suspend the proceeding and shall give notice thereof in the prescribed manner to the shipping master.

Postponement of proceedings,

6. (1) If on receipt of a notice under section 5, the shipping master certifies to the Court in the prescribed manner that the seaman is a serving seaman, the Court shall thereupon postpone the proceeding in respect of the seaman for the prescribed period, or if no period has been prescribed, for such period as it thinks fit:

Provided that if by reason of the continued absence of the seaman the question of any further postponement of the proceeding in respect of the seaman arises, the Court shall in deciding the question have regard to the purposes of this Act.

(2) If the shipping master either certifies that the seaman is not for the time being a serving seaman or fails within two months from the date of the receipt of the notice under section 5 to certify that the seaman is a serving seaman, the Court may, if it thinks fit, continue the proceeding.

Power to set aside decrees and orders passed against serving seaman.

7. (1) Where in any proceeding before a Court a decree or order has been passed against any seaman while he was a serving seaman, the seaman, or if he dies while he is a serving seaman, his legal representative, may apply to the said Court to have the decree or order set aside, and if the Court, after giving an opportunity to the opposite party of being heard, is satisfied that the interests of justice require that the decree or order should be set aside as against the seaman, the Court shall, subject to such conditions, if any, as it thinks fit to impose, make an order accordingly, and may, if it appears that any opposite party in the proceeding has failed to comply with the provisions of section 3, award, subject to such conditions as may be prescribed, damages against such opposite party.

(2) The period of limitation for an application under sub-section (1) shall be sixty days from the date on which the seaman first ceases to be a serving seaman after the passing of the decree or order, or where the summons or notice was not duly served on the seaman in the proceeding in which the decree or order was passed, from the date on which the applicant had knowledge of the decree or order, whichever is later; and the provisions of section 5 of the Indian Limitation Act, 1908, shall apply to such applications. 12

(3) Where the decree or order in respect of which an application under sub-section (1) is made is of such a nature that it cannot be set aside as against the seaman only, it may be set aside as against all or any of the parties against whom it was made.

1946 : Act XXII.] *Mica Mines Labour Welfare Fund.*

(4) Where a Court sets aside a decree or order under this section, it shall appoint a day for proceeding with the suit, appeal or application, as the case may be, in respect of which the decree or order was passed.

IX of 1908. 8. In computing the period of limitation provided in this Act or in the Indian Limitation Act, 1908, or in any other law for the time being in force, for any suit, appeal or application to a Court to which a seaman is a party, the period or periods during which the seaman has been a serving seaman, and if the seaman has died while he was a serving seaman, the period from the date of his death to the date on which his next of kin was first informed, by the shipping master or otherwise, of his death, shall be excluded :

Modification of law of limitation where seaman is a party.

Provided that this section shall not apply in the case of any suit, appeal or application instituted or made with the object of enforcing a right of pre-emption except in such areas and in such circumstances as the Central Government may, by notification in the official Gazette, specify in this behalf.

9. If any Court is in doubt whether, for the purposes of section 7 or section 8, a seaman is or was at any particular time or during any particular period a serving seaman, it may refer the question to the shipping master, and the certificate of the shipping master shall be conclusive evidence on the question.

Reference in matters of doubt to shipping masters.

10. The Central Government, after consulting the High Courts concerned, may by notification in the official Gazette make rules to provide for all or any of the following matters, namely :—

Power to make rules.

- (a) the manner and form in which any notice or certificate under this Act shall be given;
- (b) the period for which proceedings or any class of proceedings shall be postponed under sub-section (1) of section 6;
- (c) the conditions subject to which damages may be awarded under sub-section (1) of section 7, and the amount of such damages;
- (d) any other matter which is to be or may be prescribed, and generally, any matters incidental to the purposes of this Act.

THE MICA MINES LABOUR WELFARE FUND ACT, 1946.

¹Act No. XXII of 1946

[23rd April, 1946.]

An Act to constitute a fund for the financing of activities to promote the welfare of labour employed in the mica mining industry.

WHEREAS it is expedient to constitute a fund for the financing of activities to promote the welfare of labour employed in the mica mining industry;

It is hereby enacted as follows :—

¹For Statement of Objects and Reasons, see Gazette of India, 1946, Pt. V, p. 151; for Report of Select Committee, see *ibid*, p. 184.

Short title
and extent.

1. (1) This Act may be called the Mica Mines Labour Welfare Fund Act, 1946.

(2) It extends to ^{the whole} ~~all the Provinces of India.~~ ^{Jammu & Kashmir} except ~~the state of~~

Imposition
and collec-
tion of a
cess.

territories
which this
Act extends
to

2. (1) With effect from such ²date as the Central Government may, by notification in the official Gazette, appoint in this behalf, there shall be levied and collected, as a cess for the purposes of this Act, on all mica, in whatever state, exported from ^{the} ~~the Province~~ a duty of customs at such rate, not exceeding six and one-quarter *per centum ad valorem*, as may from time to time be fixed by the Central Government by notification in the official Gazette:

11/51

Provided that until the 1st day of April, 1947, the rate of duty so fixed shall not exceed two and one-half *per centum ad valorem*.

(2) On the last day of each month or as soon thereafter as may be convenient, there shall be paid to the credit of a fund to be called the Mica Mines Labour Welfare Fund (hereinafter referred to as the Fund) the proceeds of the duty of customs recovered during that month after deduction of the expenses, if any, for collection and recovery.

The Mica
Mines
Labour
Welfare
Fund.

3. (1) The Fund shall be applied by the Central Government to meet expenditure incurred in connection with measures in the opinion of the Central Government necessary or expedient to promote the welfare of labour employed in the mica mining industry.

(2) Without prejudice to the generality of sub-section (1), the Fund may be utilised to defray—

(a) the cost of measures for the benefit of labour employed in the mica mining industry directed towards—

(i) the improvement of public health and sanitation, the prevention of disease, and the provision and improvement of medical facilities,

(ii) the provision and improvement of water supplies and facilities for washing,

(iii) the provision and improvement of educational facilities,

(iv) the improvement of standards of living, including housing and nutrition, the amelioration of social conditions and the provision of recreational facilities,

(v) the provision of transport to and from work;

(b) the grant to a ^{State} ~~Provincial~~ Government, a local authority or the owner, agent or manager of a mica mine, of money in aid of any scheme approved by the Central Government for any purpose for which the Fund may be utilised;

(c) the cost of administering the Fund, including the allowances, if any, of members of the Advisory Committees constituted under section 4, and the salaries and the allowances, if any, of officers appointed under section 5;

¹ Subs. by the A.O. 1948 for "the whole of British India."

² With effect from 1st April, 1948 until 1st April, 1949, duty at the rate of two and one half *per centum ad valorem* has been fixed, see notification No. LW. 21(1)48, dated 20th March, 1948, Gazette of India, 1948, Pt. I, p. 591.

³ Subs. by the A.O. 1948 for "British India."

(d) any other expenditure which the Central Government may direct to be defrayed from the Fund.

(3) The Central Government shall have power to decide whether any particular expenditure is or is not debitable to the Fund, and its decision shall be final.

(4) The Central Government shall publish annually in the official Gazette report of the activities financed from the Fund, together with an estimate of receipts and expenditure of the Fund and a statement of accounts.

4. (1) The Central Government shall constitute ^{as many} ~~two~~ Advisory Committees, one for the Province of Madras and one for the Province of Bihar, to advise the Central Government on any matters arising out of the administration of this Act or the Fund. Advisory Committee

(2) The members of the Advisory Committees shall be appointed by the Central Government, and shall be of such number and chosen in such manner as may be prescribed by rules made under this Act:

Provided that each Committee shall include an equal number of members representing mica mine owners and workmen employed in the mica mining industry, and that at least one member of each Committee shall be a woman, and at least one member of each Committee shall be a member of the Legislature of the ~~Province~~ ^{States} concerned.

(3) The Chairman of each Advisory Committee shall be appointed by the Central Government.

(4) The Central Government shall publish in the official Gazette the names of all members of the Advisory Committees.

5. (1) The Central Government may appoint Inspectors, Welfare Administrators and such other officers as it thinks necessary to administer the Fund or to supervise or carry out the activities financed from the Fund. Appointment and powers of officers.

XLV of
1860.

(2) Every officer so appointed shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

(3) Any Inspector or Welfare Administrator may—

(a) with such assistance, if any, as he thinks fit, enter at any reasonable time any place which he considers it necessary to enter for the purpose of supervising or carrying out the activities financed from the Fund, and

(b) do within such place anything necessary for the proper discharge of his duties.

6. (1) The Central Government may, by notification in the official Gazette, make rules to carry into effect the purposes of this Act. Power to make rules.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

¹ For such Rules, see Gazette of India, 1948, Pt. I, p. 58.

Essential Supplies (Temporary Powers). [1946 : Act XXIV.]

- (c) the making of refunds, remissions and recoveries of the duty of customs imposed by sub-section (1) of section 2;
- (b) the composition of the Advisory Committees constituted under section 4, the manner in which the members thereof shall be chosen, the term of office of such members, the allowances, if any, payable to them, and the manner in which the Advisory Committees shall conduct their business;
- (c) the conditions governing the grant of money from the Fund under clause (b) of sub-section (2) of section 3;
- (d) the form of the estimate and statement referred to in sub-section (4) of section 3;
- (e) the conditions of service and the duties of all officers appointed under section 5;
- (f) the furnishing by owners or agents or managers of mica mines of statistical or other information, and the punishment by fine of failure to comply with the requirements of any rule made under this clause.

THE ESSENTIAL SUPPLIES (TEMPORARY POWERS) ACT, 1946.

Act No. XXIV of 1946

[19th November, 1946.]

An Act to provide for the continuance during a limited period of powers to control the production, supply and distribution of, and trade and commerce in, certain commodities.

WHEREAS it is necessary to provide for the continuance during a limited period of powers to control the production, supply and distribution of, and trade and commerce in, foodstuffs (including edible oilseeds and oils), cotton and woollen textiles, paper, (including news-print), petroleum and petroleum products, spare parts of mechanically propelled vehicles, coal, iron, steel and mica;

AND WHEREAS the Indian Legislature has been empowered by section 2 of the India (Central Government and Legislature) Act, 1946, to make laws with respect to the matters aforesaid;

9 and 10
Geo 6, c. 39.

It is hereby enacted as follows:—

1. (1) This Act may be called the Essential Supplies (Temporary Powers) Act, 1946.

(2) It extends to ²[all the Provinces of India.]

(3) It shall cease to have effect on the expiration of the ³period mentioned in section 4 of the India (Central Government and Legislature) Act, 1946, except as respects things done or omitted to be done before

9 and 10
Geo 6, c. 39.

¹ For Statement of Objects and Reasons, see Gazette of India, 1946, Pt. V, p. 315.

² Subs. by the A.O. 1948 for "the whole of British India."

³ Period extended upto 1st April 1949, see Notification No. 7-WL(1)/47, dated 3rd March 1948, Gazette of India, 1948, Pt. I, p. 310.

X of 1897. the expiration thereof, and section 6 of the General Clauses Act, 1897, shall apply upon the expiry of this Act as if it had then been repealed by a Central Act.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(a) "essential commodity" means any of the following classes of commodities:—

(i) foodstuffs,

(ii) cotton and woollen textiles,

(iii) paper,

(iv) petroleum and petroleum products,

(v) spare parts of mechanically propelled vehicles,

(vi) coal,

(vii) iron and steel,

(viii) mica;

(b) "food-crops" shall include crops of sugarcane;

(c) "foodstuffs" shall include edible oilseeds and oils;

(d) "notified order" means an order notified in the official Gazette;

(e) "paper" shall include newsprint;

(f) "Provincial Government", in relation to a Chief Commissioner's Province, means the Chief Commissioner.

3. (1) The Central Government, so far as it appears to it to be necessary or expedient for maintaining or increasing supplies of any essential commodity, or for securing their equitable distribution and availability at fair prices, may by notified order provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

Powers to control production, supply, distribution, etc., of essential commodities.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide—

(a) for regulating by licences, permits or otherwise the production or manufacture of any essential commodity;

(b) for bringing under cultivation any waste or arable land, whether appurtenant to a building or not, for the growing thereon of foodcrops generally or of specified food-crops, and for otherwise maintaining or increasing the cultivation of food-crops generally, or of specified food-crops;

(c) for controlling the prices at which any essential commodity may be bought or sold;

- (d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity;
- (e) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;
- (f) for requiring any person holding stock of an essential commodity to sell the whole or a specified part of the stock at such prices and to such persons or class of persons or in such circumstances, as may be specified in the order;
- (g) for regulating or prohibiting any class of commercial or financial transactions relating to foodstuffs or cotton textiles, which, in the opinion of the authority making the order are, or if unregulated are likely to be, detrimental, to public interest;
- (h) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;
- (i) for requiring persons engaged in the production, supply or distribution of, or trade or commerce in, any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order;
- (j) for any incidental and supplementary matters, including in particular the entering, and search of premises, vehicles, vessels and aircraft, the seizure by a person authorised to make such search of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being or is about to be committed, the grant or issue of licences, permits or other documents, and the charging of fees therefor.

(3) An order made under sub-section (1) may confer powers and impose duties upon the Central Government or officers and authorities of the Central Government, notwithstanding that it relates to a matter in respect of which the Provincial Legislature also has power to make laws.

(4) The Central Government, so far as it appears to it to be necessary for maintaining or increasing the production and supply of an essential commodity, may by order authorise any person (hereinafter referred to as an authorised controller) to exercise, with respect to the whole or any part of any such undertaking engaged in the production and supply of the commodity as may be specified in the order, such functions of control as may be provided by the order; and so long as an order made under this sub-section is in force with respect to any undertaking or part thereof—

- (a) the authorised controller shall exercise his functions in accordance with any instructions given to him by the Central Government, so, however, that he shall not have

any power to give any direction inconsistent with the provisions of any Act or other instrument determining the functions of the undertakers except in so far as may be specifically provided by the order, and

- (b) the undertaking or part shall be carried on in accordance with any directions given by the authorised controller in accordance with the provisions of the order, and any person having any functions of management in relation to the undertaking or part shall comply with any such directions.

4. The Central Government may by notified order direct that the power to make orders under section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by—

Delegation
of powers.

- (a) such officer or authority subordinate to the Central Government, or
- (b) such Provincial Government or such officer or authority subordinate to a Provincial Government, as may be specified in the direction.

5. The Central Government may give directions to any Provincial Government as to the carrying into execution in the Province of any order made under section 3.

Power to
issue direc-
tions to
Provinces.

6. Any order made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

Effect of
orders in-
consistent
with other
enactments.

7. (1) If any person contravenes any order made under section 3, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both, and if the order so provides, any Court trying such contravention may direct that any property in respect of which the Court is satisfied that the order has been contravened shall be forfeited to His Majesty:

Penalties.

Provided that where the contravention is of an order relating to foodstuffs which contains an express provision in this behalf, the Court shall make such direction, unless for reasons to be recorded in writing it is of opinion that the direction should not be made in respect of the whole, or, as the case may be, a part, of the property.

(2) If any person to whom a direction is given under sub-section (4) of section 3 fails to comply with the direction, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

8. Any person who attempts to contravene, or abets a contravention of, any order made under section 3 shall be deemed to have contravened that order.

Attempts
and abet-
ments.

Offences by corporations.

9. If the person contravening an order made under section 3 is a company or other body corporate, every director, manager, secretary or other officer or agent thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

False statements.

10. If any person—

(i) when required by any order made under section 3 to make any statement or furnish any information, makes any statement or furnishes any information which is false in any material particular and which he knows or has reasonable cause to believe to be false, or does not believe to be true, or

(ii) makes any such statement as aforesaid in any book, account, record, declaration, return or other document which he is required by any such order to maintain or furnish,

he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

Cognizance of offences.

11. No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code.

XLV of 1860.

Power to try offences summarily.

12. Any magistrate or bench of magistrates empowered for the time being to try in a summary way the offences specified in sub-section (1) of section 260 of the Code of Criminal Procedure, 1898, may, on application in this behalf being made by the prosecution, try in accordance with the provisions contained in sections 262 to 265 of the said Code any offence punishable under this Act.

V of 1898.

Special provision regarding fines.

13. Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any Magistrate of the First Class specially empowered by the Provincial Government in this behalf and for any Presidency Magistrate to pass a sentence of fine exceeding one thousand rupees on any person convicted of contravening an order made under section 3.

V of 1898.

Presumption as to orders.

14. (1) No order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

(2) Where an order purports to have been made and signed by an authority in exercise of any power conferred by or under this Act, a Court shall, within the meaning of the Indian Evidence Act, 1872, presume that such order was so made by that authority.

I of 1872.

Burden of proof in certain cases.

15. Where any person is prosecuted for contravening any order made under section 3 which prohibits him from doing an act or being in possession of a thing without lawful authority or without a permit, licence or other document, the burden of proving that he has such authority, permit, licence or other document, shall be on him.

Protection of action taken under this Act.

16. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

(2) No suit or other legal proceeding shall lie against the Crown for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

17. (1) The Essential Supplies (Temporary Powers) Ordinance, 1946, is hereby repealed. Repeal and saving.

(2) Any order made or deemed to be made under the said Ordinance and in force immediately before the commencement of this Act shall continue in force and be deemed to be an order made under this Act; and all appointments made, licences or permits granted and directions issued under any such order and in force immediately before such commencement shall likewise continue in force and be deemed to be made, granted or issued in pursuance of this Act.

(3) For the removal of doubts it is hereby declared—

(a) that for the purposes of the said Ordinance and this Act an order of the nature referred to in section 5 of the said Ordinance made before the commencement of the said Ordinance and not previously rescinded shall be deemed to be, and always to have been, an order in force immediately before such commencement, notwithstanding that such order or parts of it, may not then have been in operation, either at all or in particular areas;

(b) that for the purposes of this Act an order made or deemed to be made under the said Ordinance and not rescinded prior to the commencement of this Act shall be deemed to be an order in force immediately before the commencement of this Act, notwithstanding that such order, or parts of it, may not then be in operation, either at all or in particular areas.

THE DELHI SPECIAL POLICE ESTABLISHMENT ACT, 1946

¹ACT No. XXV of 1946

[19th November, 1946.]

An Act to make provision for the constitution of a special police force ~~for the Chief Commissioner's Province of Delhi for the investigation of certain offences committed in connection with matters concerning Departments of the Central Government,~~ ^{the Union Territory} for the superintendence and administration of the said force and for the extension to other areas in ~~the Provinces~~ ^{the Union Territory} of the powers and jurisdiction of members of the said force in regard to the investigation of the said offences. in Delhi

WHEREAS it is necessary to constitute a special police force ~~for the Chief Commissioner's Province of Delhi for the investigation of certain offences committed in connection with matters concerning~~

¹ For Statement of Objects and Reasons, see Gazette of India, 1946, Pt. V. p. 257.

² Subs. by the A.O. 1948, for "the whole of British India".

copy of notification No. 21/5/52-P.11 dated the 31st Oct. 1952 from the Ministry of Home Affairs to all Ministers of the Government of India etc.

In exercise of the powers conferred by section 3 of the Delhi Special Police Establishment Act 1946 (XXV of 1946) and in supersession of the notification of the Government of India in the Ministry of Home Affairs No. 38/3/48 SPE, dated the 3rd June 1948, the Central Govt. hereby specifies the following offences and classes of offence for the purposes of the said sections namely:--

(a) offences punishable under sections 161, 162 165, 165-A, 258, 259, 260, 261, 262, 263, 263-A, 379 to 382, 406 to 409, 411 to 414, 417 to 420, 465, (Act XLV of 1860)

V of 1861.

(b) offences punishable under the prevention of Corporation Act, 1947 (II of 1947);

(c) offences punishable under the imports and exports (Control) Act, 1947 (XVIII of 1947);

(d) offences punishable under the Foreign Exchange Regulations Act, 1947, (VII of 1947);

(e) offences punishable under section 52 of the Indian Post Office Act, 1878 (VI of 1898);

(f) offences punishable under sections 7 and 8 of the Essential Supplies (Temporary Powers) Act 1946 (XXIV of 1946) and conspiracies in relation thereto or in connection therewith;

(g) attempts, abetments and ~~conspiracies~~ conspiracies in relation to or connected with the offences mentioned in clauses (a) to (f) and any other offences committed in the course of the same transaction arising out of the same facts.

Establishment.

Superintendence and administration of special police establishment.

4. (1) The superintendence of the Delhi Special Police Establishment shall vest in the Central Government.

(2) The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government who shall exercise in respect of that police establishment such of the powers exercisable by an Inspector-General of Police in respect of the police force in a ~~Province~~ ^{State}, as the Central Government may specify in this behalf.

Extension of powers and jurisdiction of special police establishment to other areas.

5. (1) The Central Government may by order extend to any area (including Railway areas) in ~~the Provinces~~ ^{the Union Territory} outside the Chief Commissioner's Province of Delhi the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification under section 3.

¹ Subs. by the A.O. 1948 for "British India".

² Subs. by the A. O. 1948 for "the whole of British India". *not being a union territory*

(2) When by an order under sub-section (1) the powers and jurisdiction of members of the said police establishment are extended to any such area, a member thereof may, subject to any orders which the Central Government may make in this behalf, discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of the police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force.

6. Nothing contained in section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in ~~the Provinces~~ outside the Chief Commissioner's Province of Delhi, not being a Railway area, without the consent—

Consent of Provincial Government to exercise of powers and jurisdiction.

(a) in case such area is in a Governor's Province, of the Government of that Province; and

(b) in case such area is in a Chief Commissioner's Province, of the Chief Commissioner.

Explanation:—In sec. 586 its word "India" means the territory of India excluding its State, of Jammu & Kashmir.

7. The Delhi Special Police Establishment Ordinance, 1946, is hereby repealed.

XXV/50

Repeal of Ordinance XXII of 1946.

THE SPECIAL TRIBUNALS (SUPPLEMENTARY PROVISIONS) ACT, 1946.

²Act No. XXVI of 1946.

[22nd November, 1946.]

An Act to make certain provisions in relation to sentences and orders passed by Special Tribunals constituted under the Criminal Law Amendment Ordinance, 1943, on such Tribunals ceasing to function.

WHEREAS it is expedient to make certain provisions in relation to sentences and orders passed by Special Tribunals constituted under the Criminal Law Amendment Ordinance, 1943, on such Tribunals ceasing to function;

XXIX of 1943.

It is hereby enacted as follows:—

1. (1) This Act may be called the Special Tribunals (Supplementary
- (2) It extends to the whole of India except the territories which immediately before the 1st November 1956, were comprised in Part B States.

Short title and extent,

(s.p)

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tuted under the Criminal Law Amendment Ordinance, 1943.

¹ Subs. by the A. O. 1948 for "British India."

² For Statement of Objects and Reasons, see Gazette of India, 1946, Pt. V, p. 259.

³ Subs. by the A.O. 1948, for "the whole of British India".

476 *Special Tribunals (Supplementary Provisions)*. [1946: Act XXVI,
Banking Companies [1946: Act XXVII.
(Restriction of Branches).

Provision
 regarding
 sentences
 and orders
 of Special
 Tribunal
 which cease
 to function,

3. When any Special Tribunal ceases to function, the sentences or orders passed by it in any case shall, for the purposes of the provisions of the Code of Criminal Procedure, 1898, applicable in respect of those sentences or orders, be deemed to have been passed by the Court of Session within the local limits of whose jurisdiction the offences charged in the case are alleged to have taken place, or, if there be more than one such Court of Session, by such one of them as the High Court, either in appeal or in revision or on a reference made to it specially in this behalf, may determine:

V of 1898.

Provided that the references in this section to a Court of Session shall, where the offences charged in the case are alleged to have taken place in a Presidency town, be construed as references to the Chief Presidency Magistrate.

Repeal of
 Ord. XXIII
 of 1946.

4. ~~The Special Tribunals (Supplementary Provisions) Ordinance, 1946, is hereby repealed.~~ ~~XXXV/50~~

THE BANKING COMPANIES (RESTRICTION OF
 BRANCHES) ACT, 1946.

¹Act No. XXVII of 1946.

[22nd November, 1946.]

An Act to restrict the opening and removal of branches
 by banking companies.

WHEREAS it is expedient to restrict the indiscriminate opening and removal of branches by banking companies;

It is hereby enacted as follows:—

Short title
 and extent¹.

1. (1) This Act may be called the Banking Companies (Restriction of Branches) Act, 1946.

(2) It extends to ²[all the Provinces of India].

Interpre-
 tation.

2. In this Act,—

(a) “banking company” means a banking company as defined in section 277F of the Indian Companies Act, 1913;

VII of
 1913.

(b) “branch” includes any sub-office, pay-office, sub-pay-office and any place of business of a banking company at which deposits are received, cheques cashed or moneys lent;

(c) the expression “officer” has the meaning assigned to it in the Indian Companies Act, 1913;

VII of
 1913.

(d) “Reserve Bank” means the Reserve Bank of India.

Restriction
 on opening
 and
 removal of
 branches.

3. (1) No banking company shall open a new branch or change the location of an existing branch without obtaining prior permission in writing from the Reserve Bank.

¹ For Statement of Objects and Reasons, see Gazette of India, 1946, Pt. V, p. 246.

² Suba. by the A.O. 1948, for “the whole of British India”.

(2) The Reserve Bank may, before giving the permission referred to in sub-section (1) to any banking company, take into consideration its financial condition and history, the general character of its management, the adequacy of its capital structure and earning prospects and the public interest to be served by the branch.

(3) For all or any of the purposes referred to in sub-section (2), the Reserve Bank may, with the previous approval of the Central Government, cause an inspection to be made of the books, accounts and other documents of the banking company by any competent person authorised by the Reserve Bank, and it shall be the duty of every director or other officer of the banking company to produce to any person so authorised all such books, accounts and other documents in his custody or power relating to the affairs of the banking company as the person so authorised may require of him.

(4) Any person making an inspection under sub-section (3) may examine on oath any director or other officer of the banking company in relation to its business, and may administer an oath accordingly.

4. (1) If any banking company opens a branch or changes the location of an existing branch in contravention of section 3, every director or other officer of the banking company who is knowingly and wilfully a party to the contravention shall be liable to a fine which may extend to one hundred rupees for every day during which that branch remains open for business or, as the case may be, the change in its location continues. Penalty.

(2) If any person refuses to produce any book, account or other document which under section 3 it is his duty to produce, or to answer any question relating to the business of the banking company, he shall be liable to a fine which may extend to five hundred rupees in respect of each offence, and if he persists in such refusal, to a further fine which may extend to fifty rupees for every day during which the offence continues.

THE HINDU MARRIAGE DISABILITIES REMOVAL ACT, 1946.

¹Act No. XXVIII of 1946.

[22nd November, 1946.]

An Act to remove certain disabilities and doubts under Hindu
Law in respect of marriages between Hindus.

WHEREAS it is expedient to remove certain disabilities and doubts under the Hindu Law in respect of marriages between Hindus;

It is hereby enacted as follows:—

1. (1) This Act may be called the Hindu Marriage Disabilities Removal Act, 1946.

*Short title
and extent.*

¹ For Statement of Objects and Reasons, see Gazette of India, 1946, Pt. V, p. 93; for Report of Select Committee, see *ibid.*, p. 139.

(2) It extends to ¹[all the Provinces of India.]

Marriages
between
persons of
same gotra
or pravara
or of
different
sub-divi-
sions of the
same caste.

2. Notwithstanding any text, rule or interpretation of the Hindu Law or any custom or usage, a marriage between Hindus, which is otherwise valid, shall not be invalid by reason only of the fact that the parties thereto—

(a) belong to the same *gotra* or *pravara*, or

25/33

(b) belong to different sub-divisions of the same caste.

THE FOREIGNERS ACT, 1946.

²Act No. XXXI of 1946.

[23rd November, 1946.]

An Act to confer upon the Central Government certain powers in respect of foreigners.

WHEREAS it is expedient to provide for the exercise by the Central Government of certain powers in respect of the entry of foreigners into ³[India], their presence therein and their departure therefrom;

It is hereby enacted as follows:—

Short title
and extent.

1. (1) This Act may be called the Foreigners Act, 1946.

(2) It extends to the whole of ³[India].

Definitions.

2. In this Act—

(a) “foreigner” means a person who ~~is not a citizen of India~~

(i) is not a natural-born British subject as defined in sub-sections (1) and (2) of section 1 of the British Nationality and Status of Aliens Act, 1914, or

4 G

(ii) has not been granted a certificate of naturalization as a British subject under any law for the time being in force in ³[India], or

(iii) is not a ruler or subject of an ⁴[Acceding State], or

(iv) is not a native of the ⁵[Assam tribal areas]:

Provided that any British subject who, under any law for the time being in force in ³[India], ceases to be a British subject shall thereupon be deemed to be a foreigner;

(b) “prescribed” means prescribed by orders made under this Act;

¹ Subs. by the A.O. 1948, for “the whole of British India”.

² For Statement of Objects and Reasons, see Gazette of India, 1946, Pt. V, p. 254.

³ Subs. by s. 2 of the Foreigners (Amendment) Act, 1947 (38 of 1947) for “British India”.

⁴ Subs. by s. 3, *ibid.*, for “Indian State”.

⁵ Subs. *ibid.*, for “Tribal areas”.

(c) "specified" means specified by direction of a prescribed authority.

3. (1) The Central Government may by ¹order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into ²[India] or their departure therefrom or their presence or continued presence therein. Power to make orders.

(2) In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner—

- (a) shall not enter ²[India], or shall enter ²[India] only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;
- (b) shall not depart from ²[India], or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;
- (c) shall not remain in ²[India] or in any prescribed area therein;
- ³[(cc) shall, if he has been required by order under this section not to remain in India, meet from any resources at his disposal the cost of his removal from India and of his maintenance therein pending such removal];
- (d) shall remove himself to, and remain in such area in ²[India] as may be prescribed;
- (e) shall comply with such conditions as may be prescribed or specified—
 - (i) requiring him to reside in a particular place;
 - (ii) imposing any restrictions on his movements;
 - (iii) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;
 - (iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified;
 - (v) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;
 - (vi) prohibiting him from association with persons of a prescribed or specified description;

¹ For Foreigners Order, 1948, see Gazette of India, 1948, Pt. I, p. 198.

² Subs. by s. 2 of the Foreigners (Amendment) Act, 1947 (83 of 1947) for "British India".

³ Ins. by s. 4, *ibid.*

- (vii) prohibiting him from engaging in activities of a prescribed or specified description;
- (viii) prohibiting him from using or possessing prescribed or specified articles;
- (ix) otherwise regulating his conduct in any such particular as may be prescribed or specified;

3A. A power to exempt citizens of Commonwealth Countries and other persons from application of Act, in certain cases.- (1) The Central Govt. may, by order declare that all or any of the provisions of this Act, or of any order made thereunder shall not apply, or shall apply only in such circumstances or with such exceptions or modifications or subject to such conditions as may be specified in the order, to or in relation to --

(a) the citizens of any such Commonwealth country as may be so specified; or

(b) any other individual foreigner or class or description of foreigner.

(2) A copy of every order made under this section shall be placed on the table of both Houses of Parliament as soon as may be after it is made.

~~XI/57.~~

~~(2) or section 3A requiring him to reside at a place of residence under supervision of a number of foreigners, shall while residing therein be subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central~~

(3) No person shall--

(a) knowingly assist a person on parole to escape from the place set apart for his residence or knowingly harbour any such person, or

(b) give a person on parole any assistance with intent thereby to prevent, hinder or interfere with the apprehension of such person.

(4) The Central Government may, by order, provide for regulating access to, and the conduct of persons in, places where persons on parole are restricted and for, prohibiting or regulating the despatch of conveyance from outside such places to or for such persons therein of such art. as may be prescribed.

C.A. 11/57.

5. (1) No foreigner who was in ¹[India] on the date on which this Act came into force shall, while in ¹[India] after that date, assume or use or purport to assume or use for any purpose any name other than that by which he was ordinarily known immediately before the said date. Change of name.

(2) Where, after the date on which this Act came into force, any foreigner carries on or purports to carry on (whether alone or in association with any other person) any trade or business under any name or style, other than that under which that trade or business was being carried on immediately before the said date, he shall, for the purposes of sub-section (1), be deemed to be using a name other than that by which he was ordinarily known immediately before the said date.

(3) In relation to any foreigner who, not having been in ¹[India] on the date on which this Act came into force, thereafter enters ¹[India], sub-sections (1) and (2) shall have effect as if for any reference in those sub-sections to the date on which this Act came into force there were substituted a reference to the date on which he first enters ¹[India] thereafter.

(4) For the purposes of this section—

(a) the expression “name” includes a surname, and

(b) a name shall be deemed to be changed if the spelling thereof is altered.

(5) Nothing in this section shall apply to the assumption or use—

(a) of any name in pursuance of a ~~Royal~~ licence or permission granted by the Central Government; or 21/57

(b) by any married woman, of her husband's name.

6. (1) The master of any vessel landing or embarking at a port in ¹[India] passengers coming to or going from that port by sea and the pilot of any aircraft landing or embarking at any place in ¹[India] passengers coming to or going from that place by air, shall furnish to such person and in such manner as may be prescribed a return giving the prescribed particulars with respect to any passengers or members of the crew, who are foreigners.

Obligations of masters of vessels etc.

(2) Any District Magistrate and any Commissioner of Police or, where there is no Commissioner of Police, any Superintendent of Police may, for any purpose connected with the enforcement of this Act or any order made thereunder, require the master of any such vessel or the pilot of any such aircraft to furnish such information as may be prescribed in respect of passengers or members of the crew on such vessel or aircraft, as the case may be.

(3) Any passenger on such vessel or such aircraft and any member of the crew of such vessel or aircraft shall furnish to the master of the vessel or the pilot of the aircraft, as the case may be, any information required by him for the purpose of furnishing the return referred to in

¹ Subs. by s. 2 of the Foreigners (Amendment) Act, 1947 (38 of 1947) for “British India”.

sub-section (1) or for furnishing the information required under sub-section (2).

[4] If any foreigner enters India in contravention of any provision of this Act or any order made thereunder, the prescribed authority may, within two months from the date of such entry, direct the master of the vessel or the pilot of the aircraft on which such entry was effected or the owner or the agent of the owner of such vessel or aircraft, to provide, to the satisfaction of the said authority and otherwise than at the expense of Government, accommodation on a vessel or aircraft for the purpose of removing the said foreigner from India.

(5) The master of any vessel or the pilot of any aircraft which is about to carry passengers from a port or place in India to any destination outside India, or the owner or the agent of the owner of any such vessel or aircraft shall, if so directed by the Central Government and on tender of payment therefor at the current rates, provide on the vessel or aircraft accommodation to such port or place outside India, being a port or place at which the vessel or aircraft is due to call, as the Central Government may specify, for any foreigner ordered under section 3 not to remain in India and for his dependents, if any, travelling with him.]

[6] For the purposes of this section—

- (a) “master of a vessel” and “pilot of any aircraft” shall include any person authorised by such master or pilot, as the case may be, to discharge on his behalf any of the duties imposed on him by this section;
- (b) “passenger” means any person not being a *bona fide* member of the crew, travelling or seeking to travel on a vessel or aircraft.

Obligation of hotel keepers and others to furnish particulars.

7. (1) It shall be the duty of the keeper of any premises whether furnished or unfurnished where lodging or sleeping accommodation is provided for reward, to submit to such person and in such manner such information in respect of foreigners accommodated in such premises, as may be prescribed.

*Explanation:—*The information referred to in this sub-section may relate to all or any of the foreigners accommodated at such premises and may be required to be submitted periodically or at any specific time or occasion.

(2) Every person accommodated in any such premises shall furnish to the keeper thereof a statement containing such particulars as may be required by the keeper for the purpose of furnishing the information referred to in sub-section (1).

(3) The keeper of every such premises shall maintain a record of the information furnished by him under sub-section (1) and of the information obtained by him under sub-section (2) and such record shall be maintained in such manner and preserved for such period as may be

Sub-sections (4) and (5) were ins. and the original sub-section (5) re-numbered as (6) by s. 5 of the Foreigners (Amendment) Act, 1947 (38 of 1947).

prescribed, and shall at all times be open to inspection by any police officer or by a person authorised in this behalf by the District Magistrate.

¹(4) If in any area prescribed in this behalf the prescribed authority by notice published in such manner as may in the opinion of the authority be best adapted for informing the persons concerned so directs, it shall be the duty of every person occupying or having under his control any residential premises to submit to such person and in such manner such information in respect of foreigners accommodated in such premises as may be specified; and the provisions of sub-section (2) shall apply to every person accommodated in any such premises.]

²7A. (1) The prescribed authority may, subject to such conditions as may be prescribed, direct the owner or person having control of any premises used as a restaurant or as a place of public resort or entertainment or as a club and frequented by foreigners—

Power to control places frequented by foreigners.

(a) to close such premises either entirely or during specified periods, or

(b) to use or permit the use of such premises only under such conditions as may be specified, or

(c) to refuse admission to such premises either to all foreigners or to any specified foreigner or class of foreigner.

(2) A person to whom any direction has been given under sub-section (1) shall not, while such direction remains in force, use or permit to be used any other premises for any of the aforesaid purposes, except with the previous permission in writing of the prescribed authority and in accordance with any conditions which that authority may think fit to impose.

(3) Any person to whom any direction has been given under sub-section (1) and who is aggrieved thereby may, within thirty days from the date of such direction, appeal to the Central Government; and the decision of the Central Government in the matter shall be final.]

8. (1) When a foreigner is recognised as a national by the law of more than one foreign country or where for any reason it is uncertain what nationality if any is to be ascribed to a foreigner, that foreigner may be treated as the national of the country with which he appears to the prescribed authority to be most closely connected for the time being in interest or sympathy or if he is of uncertain nationality, of the country with which he was last so connected:

Determination of nationality.

Provided that where a foreigner acquired a nationality by birth, he shall, except where the Central Government so directs either generally or in a particular case, be deemed to retain that nationality unless he proves to the satisfaction of the said authority that he has subsequently acquired by naturalization or otherwise some other nationality and still recognized as entitled to protection by the Government of the country whose nationality he has so acquired.

(2) A decision as to nationality given under sub-section (1) shall be final and shall not be called in question in any Court:

¹ Ins. by s. 6 of the Foreigners (Amendment) Act, 1947 (38 of 1947).

² Ins. by s. 7, *ibid.*

Provided that the Central Government, either of its own motion or on an application by the foreigner concerned, may revise any such decision.

Burden of
proof

9. If in any case not falling under section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872, lie upon such person.

Power to
exempt
from appli-
cation of
Act,

XI/57

10. The Central Government may by order declare that any or all of the provisions of this Act or the orders made thereunder shall not apply, or shall apply only with such modifications or subject to such conditions as may be specified, to or in relation to any individual foreigner or any class or description of foreigner.

Power to
give effect
to orders,
directions,
etc.

11. (1) Any authority empowered by or under or in pursuance of the provisions of this Act to give any direction or to exercise any other power, may, in addition to any other action expressly provided for in this Act, take, or cause to be taken such steps and use, or cause to be used, such force as may, in its opinion, be reasonably necessary for securing compliance with such direction or for preventing or rectifying any breach thereof, or for the effective exercise of such power, as the case may be.

(2) Any police officer may take such steps and use such force as may, in his opinion, be reasonably necessary for securing compliance with any order made or direction given under or in pursuance of the provisions of this Act or for preventing or rectifying any breach of such order or direction.

(3) The power conferred by this section shall be deemed to confer upon any person acting in exercise thereof a right of access to any land or other property whatsoever.

Power to
delegate
authority.

12. Any authority upon which any power to make or give any direction, consent or permission or to do any other act is conferred by this Act or by any order made thereunder may, unless express provision is made to the contrary, in writing authorise, conditionally or otherwise, any authority subordinate to it to exercise such power on its behalf, and thereupon the said subordinate authority shall, subject to such conditions as may be contained in the authorisation, be deemed to be the authority upon which such power is conferred by or under this Act.

Attempts,
etc., to con-
travene the
provisions
of this Act,
etc.

13. (1) Any person who attempts to contravene, or abets or attempts to abet, or does any act preparatory to, a contravention of, the provisions of this Act or of any order made or direction given thereunder, or fails to comply with any direction given in pursuance of any such order, shall be deemed to have contravened the provisions of this Act.

(2) Any person who, knowing or 'having' reasonable cause to believe that any other person has contravened the provisions of this Act or of any order made or direction given thereunder, gives that other

person any assistance with intent thereby to prevent, hinder or otherwise interfere with his arrest, trial or punishment for the said contravention shall be deemed to have abetted that contravention.

(3) The master of any vessel or the pilot of any aircraft, as the case may be, by means of which any foreigner enters or leaves [India] in contravention of any order made under, or direction given in pursuance of, section 3 shall, unless he proves that he exercised all due diligence to prevent the said contravention, be deemed to have contravened this Act.

14. If any person contravenes the provisions of this Act or of any order made thereunder, or any direction given in pursuance of this Act or such order, he shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if such person has entered into a bond in pursuance of clause (f) of subsection (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting Court why such penalty should not be paid.

Penalties.

15. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Protection to persons acting under this Act.

XVI of 1939.

XXXIV of 1920.

16. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Registration of Foreigners Act, 1939, the Indian Passport Act, 1920, and of any other enactment for the time being in force.

Application of other laws not barred.

III of 1864.
II of 1940.
XXI of 1946.

17. The Foreigners Act, 1864, the Foreigners Act, 1940, and the Foreigners Act (Amendment) Ordinance, 1946, are hereby repealed.

Repeals.

THE PREVENTION OF CORRUPTION ACT, 1947.

²Act No. II of 1947.

[11th March, 1947.]

An Act for the more effective prevention of bribery and corruption.

WHEREAS it is expedient to make more effective provision for the prevention of bribery and corruption;

It is hereby enacted as follows:—

1. (1) This Act may be called the Prevention of Corruption Act, 1947.

Short title extent and duration.

(2) It extends to ^{Whole} ~~all the Provinces of India~~ ^{except the State of Jammu & Kashmir} and it applies also to all British subjects and servants of the Crown in any part of India and to British subjects who are domiciled in any part of India wherever they may be ^{Citizen of India} ~~they may be~~.

¹ Subs. by s. 2 of the Foreigners (Amendment) Act, 1947 (38 of 1947) for "British India".

² For Statement of Objects and Reasons, see Gazette of India, 1946, Pt. V., p. 374.

³ Subs. by the A.O. 1948, for "the whole of British India".

(3) Section 5 shall remain in force for a period of three years from the commencement of this Act.

Interpreta-
tion.

2. For the purposes of this Act, "public servant" means a public servant as defined in section 21 of the Indian Penal Code.

XLV, of
1860.

Offences
under sec-
tions 161
and 165 of
the Penal
Code to be
cognizable
offences.

3. An offence punishable under ~~section 161~~ or section 165 of the Indian Penal Code shall be deemed to be a cognizable offence for the purposes of the Code of Criminal Procedure, 1898, notwithstanding anything to the contrary contained therein:

XLV of
1860.
V of 1898.

Provided that a police officer below the rank of Deputy Superintendent of Police shall not investigate any such offence without the

Presump-
tion where
public
servant
accepts
gratifica-
tion other
than legal
remunera-
tion.

(2) Where in any trial of an offence punishable under section 165A of the Indian Penal Code (Act XLV of 1860), it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed unless the contrary is proved that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 161 of the Indian Penal Code; or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections ~~165A and 165B~~ (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.

LIX/52.

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted

Criminal
misconduct
in discharge
of official
duty.

to him or under his control as a public servant or allows any other person so to do, or

(d) If he, by corrupt or illegal means or by otherwise abusing his position as a public servant, or

5A. Investigation into cases under this Act; Notwithstanding anything contained in the Code of Criminal procedure, 1898), no police officer below the rank -

(a) in the presidency towns of Madras and Calcutta, of an assistant commissioner of police,

(b) in the presidency town of Bombay of a Superintendent of police, and

(c) elsewhere, of a deputy superintendent of police, shall investigate any offence punishable under section 161, section 165 or section 165A of the Indian Penal Code (Act XLV of 1860) or under sub-section (2) of section 5 of this Act without the order of a presidency magistrate or a magistrate of the first class as the case may be, or make any arrest therefore without a warrant:

Provided that a police officer of the Delhi Special Police Establishment, not below the rank of an inspector of Police who is specially authorized by the Inspector-General of Police of that Establishment may, if he has reasons to believe that, on account of the delay involved in obtaining the order of a magistrate of the first class, any valuable evidence relating to such offence is likely to be destroyed or concealed, investigate the offence without such order; but in every case where he makes such investigation, the police officer shall, as soon as may be, send a report of the same to a magistrate of the first-class, together with the circumstances in which the investigation was made.

50/57

Previous sanction necessary for prosecution.

State

State

LIX/52.

~~For any reason whatsoever any doubt arises whether the previous sanction as required under sub-section (1) should be given by the Central or State Govt. or any other authority, such sanction shall be given by that Govt. or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.~~

Accused person to be competent witness.

LIX/52.

- (b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial,
- (c) he shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless—
- (i) the proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is charged, or
- (ii) he has personally or by his pleader asked questions of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution, or
- (iii) he has given evidence against any other person charged with the same offence.

THE FOREIGN EXCHANGE REGULATION ACT, 1947.

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3. Authorised dealers in foreign exchange.
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11. Power to regulate the uses, etc. of imported gold and silver.
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Act No. VII of 1947.

[11th March, 1947.]

An Act to regulate certain payments, dealings in foreign exchange and securities and the import and export of currency and bullion.

WHEREAS it is expedient in the economic and financial interests of India to provide for the regulation of certain payments, dealings in foreign exchange and securities and the import and export of currency and bullion;

It is hereby enacted as follows:—

1. (1) This Act may be called the Foreign Exchange Regulation Act, 1947.

Short title
extent,
commence-
ment and
duration.

(2) It extends to ^{whole} ~~all the Provinces of India, and applies also to British subjects and servants of the Crown in any part of India, and to British subjects who are domiciled in any part of India wherever they may be.~~ ^{It applies also to all citizens of India outside India}

(3) It shall come into force on such ^{date} as the Central Government may, by notification in the official Gazette, appoint in this behalf.

(4) It shall remain in force ~~for five years only, but the Central Government may, by notification in the official Gazette, direct that it shall remain in force for a further period not exceeding three years.~~
upto the 31st day of December 1957

¹ For Statement of Objects and Reasons, see Gazette of India, 1945, Pt. V, p. 303.

² Subs. by the A.O. 1948 for "British India".

³ The 25th March, 1947, see Gazette of India, 1947, Pt. I, p. 332.

Interpreta-
tion.2. In
or context,

(bb) "Director of Regulation the purpose this Act;"

(a) "Appellate Board" means the Foreign Exchange Regulation Appellate Board constituted by the Central Govt. under sub-section (i) of section 23A.

(ai) "authorised dealer" means a ~~certified~~ person for the time being authorised under section 3 to deal in foreign exchange;

(aia) "bearer certificate" means a certificate of title to securities by the delivery of which (with or without endorsement) the title to the securities is transferable;

(aiii) "certificate of title to a security" means any document used in the ordinary course of business as proof of the possession or control of the security, or authorising or purporting to authorise, either by an endorsement to transfer or receive the security thereby represented;

(aiv) "coupon" means a coupon representing dividends or interest on a security;"

(f) "gold" includes gold in the form of bullion or ingot, whether refined or not; and ~~jewellery or articles made wholly or mainly of gold;~~

(g) "Indian currency" means currency which is expressed or drawn in Indian rupees;

(h) "owner", in relation to any security, includes any person who has power to sell or transfer the security, or who has the custody thereof or who receives, whether on his own behalf or on behalf of any other person, dividends or interest thereon, and who has any interest therein, and in a case where any security is held on any trust or dividends or interest thereon are paid into a trust fund, also includes any trustee or any person entitled to enforce the performance of the trust or to revoke or vary, with or without the consent of any other person, the trust or any terms thereof, or to control the investment of the trust moneys;

(i) "prescribed" means prescribed by rules made under this Act;

(j) "Reserve Bank" means the Reserve Bank of India;

(k) "security" means shares, stocks, bonds, debentures, debenture stock and Government securities, as defined in the Indian Securities Act, 1920, deposit receipts in respect of deposits of securities, and units or sub-units of unit trusts, but does not include bills of exchange or promissory notes other than Government promissory notes;

"silver" ^{includes} silver bullion or ingot, silver sheets and plates which have undergone no process of manufacture subsequent to rolling and uncurrent silver coin which is ~~not legal tender in India or elsewhere; and jewellery or~~

(m) "transfer" includes, in relation to any security, transfer by way of loan or security.

3. (1) The Reserve Bank may, on application made to it in this behalf, authorise any person to deal in foreign exchange.

Authorised
dealers in
foreign
exchange.

(2) An authorisation under this section ^{shall be in writing and} ~~shall be in writing and~~

(i) may authorise dealings in all foreign currencies or may be restricted to authorising dealings in specified foreign currencies only;

(ii) may authorise transactions of all descriptions in foreign currencies or may be restricted to authorising specified transactions only;

(iii) may be granted to be effective for a specified period, or within specified amounts, and may in all cases be revoked for reasons appearing to it sufficient by the Reserve Bank.

(3) An authorised dealer shall in all his dealings in foreign exchange comply with such general or special directions or instructions as the Reserve Bank may from time to time think fit to give, and, except with the previous permission of the Reserve Bank, an authorised dealer shall not engage in any transaction involving any foreign exchange which is not in conformity with the terms of his authorisation under this section.

(4) An authorised dealer shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declarations and to give such information as will reasonably satisfy him that the transaction will not involve, and is not designed for the purpose of, any contravention or evasion of the provisions of this Act or of any rules, directions or orders made thereunder, and where the said person refuses to comply with any such requirement or makes only unsatisfactory compliance therewith, the authorised dealer shall refuse to undertake the transaction and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Reserve Bank.

4. (1) ¹Except with the previous general or special permission of the Reserve Bank, no person other than an authorised dealer shall in ~~the Provinces~~, and no person resident in ~~the Provinces~~ other than an authorised dealer shall outside ~~the Provinces~~, buy or borrow from, or sell or lend to, or exchange with, any person not being an authorised dealer, any foreign exchange.

Restrictions
on dealing
in foreign
exchange.

Ind: a

(2) Except with the previous general or special permission of the Reserve Bank, no person whether an authorised dealer or otherwise, shall enter into any transaction which provides for the conversion of Indian currency into foreign currency or foreign currency into Indian currency at rates of exchange other than the rates for the time being authorised by the Reserve Bank.

(3) Where any foreign exchange is acquired by any person other than an authorised dealer for any particular purpose, or where any

¹ For certain exceptions, see Gazette of India, 1947, Extraordinary, p. 625.

² Subs. by the A.O. 1948, for "British India".

person has been permitted conditionally to acquire foreign exchange, the said person shall not use the foreign exchange so acquired otherwise than for that purpose or, as the case may be, fail to comply with any condition to which the permission granted to him is subject, and where any foreign exchange so acquired cannot be so used or, as the case may be, the conditions cannot be complied with, the said person shall without delay sell the foreign exchange to an authorised dealer.

(4) Nothing in this section shall be deemed to prevent a person from buying from any post office, in accordance with any law or rules made thereunder for the time being in force, any foreign exchange in the form of postal orders or money orders.

Restric-
tions on
payments.

5. (1) Save as may be provided in and in accordance with any general or special exemption from the provisions of this sub-section which may be granted conditionally or unconditionally by the Reserve Bank, no person in, or resident in, ^{India} ~~the Provinces~~ shall—

- (a) make any payment to or for the credit of any person resident outside India;
- (b) draw, issue or negotiate any bill of exchange or promissory note or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment is created or transferred in favour of any person resident outside India;
- (c) make any payment to or for the credit of any person by order or on behalf of any person resident outside India;
- (d) place any sum to the credit of any person resident outside India;
- (e) make any payment to or for the credit of any person as consideration for or in association with—
 - (i) the receipt by any person of a payment or the acquisition by any person of property outside India;
 - (ii) the creation or transfer in favour of any person of a right whether actual or contingent to receive a payment or acquire property outside India;
- (f) draw, issue or negotiate any bill of exchange or promissory note, transfer any security or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment is created or transferred in favour of any person as consideration for or in association with any matter referred to in clause (e).

(2) Nothing in sub-section (1) shall render unlawful—

- (a) the making of any payment already authorised, either with foreign exchange obtained from an authorised dealer under section 4 or with foreign exchange retained by a person in pursuance of an authorisation granted by the Reserve Bank;

¹ For such exemption, see: Gazette of India, 1947, Extraordinary, p. 625.

² Data by the A.O. 1948 for "British India".

(b) the making of any payment with foreign exchange received by way of salary or payment for services not arising from business in, or anything done while in, India.

(3) Nothing in this section shall restrict the doing by any person of anything within the scope of any authorisation or exemption granted under this Act.

(4) For the purposes of this section, "security" also includes coupons or warrants representing dividends or interest and life or endowment insurance policies.

6. (1) Where an exemption from the provisions of section 5 is granted by the Reserve Bank in respect of payment of any sum to any person resident outside India and the exemption is made subject to the condition that the payment is made to a blocked account—

Blocked
account

(a) the payment shall be made to a blocked account in the name of that person in such manner as the Reserve Bank may by general or special order direct; and

(b) the crediting of that sum to that account shall, to the extent of the sum credited, be a good discharge to the person making the payment.

(2) No sum standing at the credit of a blocked account shall be drawn on except in accordance with any general or special permission which may be granted conditionally or otherwise by the Reserve Bank.

(3) In this section "blocked account" means ^{and} an account opened as a blocked account at any office or branch in ^{the} ~~the~~ ^{Provinces} of a bank authorised in this behalf by the Reserve Bank, or an account blocked, whether before or after the commencement of this Act, by order of the Reserve Bank.

7. (1) Where in the opinion of the Central Government it is necessary or expedient to regulate payments due to persons resident in any territory, the Central Government may, by notification in the official Gazette, direct that such payments or any class of such payments shall be made only into an account (hereinafter referred to as a special account) to be maintained for the purpose by the Reserve Bank or an authorised dealer specially authorised by the Reserve Bank in this behalf.

Special
accounts

(2) The credit of a sum to a special account shall, to the extent of the sum credited, be a good discharge to the person making the payment:

Provided that where the liability of the person making the payment is to make the payment in foreign currency, the extent of the discharge shall be ascertained by converting the amount paid into that currency at such rate of exchange as is for the time being fixed or authorised by the Reserve Bank.

(3) The sum standing to the credit of any special account shall from time to time be applied—

¹ Subs. by the A.O. 1948 for "British India".

- (a) where any agreement is entered into between the Central Government and the Government of the territory to which the aforesaid notification relates for the regulation of payments between persons resident in ¹[the Provinces] and in that territory, in such manner as the Reserve Bank, having regard to the provisions of such agreement, may direct, or
- (b) where no such agreement is entered into, for the purpose of paying wholly or partly, and in such order of preference and at such times as the Central Government may direct, debts due from the persons resident in the said territory to persons resident in ¹[the Provinces] or in such other territories as the Central Government may by order specify in this behalf.

Restric-
tions on
import and
export of
certain
currency
and
bullion.

8. (1) The Central Government may, by ²notification in the official Gazette, order that, subject to such exemptions, if any, as may be contained in the notification, no person shall, except with the general or special permission of the Reserve Bank and on payment of the fee, if any, prescribed bring or send into ¹[the Provinces] any gold or silver or any currency notes or bank notes or coin whether Indian or foreign.

³*Explanation.*—The bringing or sending into any port or place in ¹[the Provinces] of any such article as aforesaid intended to be taken out of ¹[the Provinces] without being removed from the ship or conveyance in which it is being carried shall nonetheless be deemed to be a bringing, or as the case may be sending, into ¹[the Provinces] of that article for the purposes of this section.]

India

(2) No person shall, except with the general or special permission of the Reserve Bank or the written permission of a person authorised in this behalf by the Reserve Bank, take or send out of ¹[the Provinces] any gold, jewellery or precious stones, or Indian currency notes, bank notes or coin or foreign exchange other than foreign exchange obtained from an authorised dealer.

31/57

(3) The restrictions imposed by sub-sections (1) and (2) shall be deemed to have been imposed under section 19 of the Sea Customs Act, 1878, without prejudice to the provisions of section 23 of this Act, and all the provisions of that Act shall have effect accordingly.

VIII of
1878.

31/52

Acquisi-
tion by
Central
Govern-
ment of
foreign
exchange.

9. The Central Government may, by ²notification in the official Gazette, order every person in, or resident in, ¹[the Provinces]—

- (a) who owns such foreign exchange as may be specified in the notification, to offer it, or cause it to be offered for sale to the Reserve Bank on behalf of the Central Government or to such person, as the Reserve Bank may authorise for the purpose, at such price as the Central Government may fix,

¹ Subs. by the A.O. 1948 for "British India".

² For such notifications, see Gazette of India, 1947, Extraordinary, pp. 321, 323 and 324.

³ Ins. by s. 2 of the Foreign Exchange Regulation (Amendment) Act, 1947 (40 of 1947). (Not republished).

being a price which is in the opinion of the Central Government not less than the market rate of the foreign exchange when it is offered for sale;

- (b) who is entitled to assign any right to receive such foreign exchange as may be specified in the notification, to transfer that right to the Reserve Bank on behalf of the Central Government on payment of such consideration therefor as the Central Government may fix:

Provided that the Central Government may by the said notification or another order exempt any persons or class of persons from the operation of such order:

Provided further that nothing in this section shall apply to any foreign exchange acquired by a person from an authorised dealer and retained by him with the permission of the Reserve Bank for any purpose.

10. (1) ¹No person who has a right to receive any foreign exchange or to receive from a person resident outside India a payment in rupees shall, except with the general or special permission of the Reserve Bank, do or refrain from doing any act with intent to secure—

Duty of persons entitled to receive foreign exchange, etc.

- (a) that the receipt by him of the whole or part of that foreign exchange or payment is delayed, or

- (b) that the foreign exchange or payment ceases in whole or in part to be receivable by him.

(2) Where a person has failed to comply with the requirements of sub-section (1) in relation to any foreign exchange or payment in rupees, the Reserve Bank may give to him such directions as appear to be expedient for the purpose of securing the receipt of the foreign exchange or payment as the case may be.

11. The Central Government may, by notification in the official Gazette, impose such conditions as it thinks necessary or expedient on the use or disposal of or dealings in gold and silver prior to, or at the time of, import into ²[the Provinces]. And: a

Power to regulate the uses, etc., of imported gold and silver.

12. (1) The Central Government may, by notification in the official Gazette, prohibit the export of any goods or class of goods specified in the notification from ²[the Provinces] directly or indirectly to any place so specified unless a declaration supported by such evidence as may be prescribed or so specified, is furnished by the exporter to the prescribed authority that the amount representing the full export value of the goods has been, or will within the prescribed period be, paid in the prescribed manner.

Payment for exported goods.

(2) Where any export of goods has been made to which a notification under sub-section (1) applies, no person entitled to sell, or procure the sale of, the said goods shall, except with the permission of the Reserve Bank, do or refrain from doing any act with intent to secure that—

¹ For certain exceptions, see Gazette of India, 1947, Extraordinary, p. 324.

² Subs. by the A. O. 1946 for "British India".

³ For such notifications, see Gazette of India, 1947, Pt. I, p. 677.

(a) the sale of the goods is delayed to an extent which is unreasonable having regard to the ordinary course of trade, or

(b) payment for the goods is made otherwise than in the prescribed manner or does not represent the full amount payable by the foreign buyer in respect of the goods, subject to such deductions, if any, as may be allowed by the Reserve Bank, or is delayed to such extent as aforesaid :

Provided that no proceedings in respect of any contravention of this sub-section shall be instituted unless the prescribed period has expired and payment for the goods representing the full amount as aforesaid has not been made in the prescribed manner.

(3) Where in relation to any such goods the said period has expired and the goods have not been sold and payment therefor has not been made as aforesaid, the Reserve Bank may give to any person entitled to sell the goods or to procure the sale thereof, such directions as appear to it to be expedient for the purpose of securing the sale of the goods and payment therefor as aforesaid, and without prejudice to the generality of the foregoing provision, may direct that the goods shall be assigned to the Central Government or to a person specified in the directions.

(4) Where any goods are assigned in accordance with sub-section (3), the Central Government shall pay to the person assigning them such sum in consideration of the net sum recovered by or on behalf of the Central Government in respect of the goods as may be determined by the Central Government.

(5) Where in relation to any such goods the value as stated in the invoice is less than the amount which in the opinion of the Reserve Bank represents the full export value of those goods, the Reserve Bank may issue an order requiring the person holding the shipping documents to retain possession thereof until such time as the exporter of the goods has made arrangements for the Reserve Bank or a person authorised by the Reserve Bank to receive on behalf of the exporter payment in the prescribed manner of an amount which represents in the opinion of the Reserve Bank the full export value of the goods.

(6) For the purpose of ensuring compliance with the provisions of this section and any orders or directions made thereunder, the Reserve Bank may require any person making any export of goods to which a notification under sub-section (1) applies to exhibit contracts with his foreign buyer or other evidence to show that the full amount payable by the said buyer in respect of the goods has been, or will within the prescribed period be, paid in the prescribed manner.

Notwithstanding anything contained in section 81 of the Companies Act

13. (1) No person shall, except with the general or special¹ permission of the Reserve Bank,—

(a) take or send any security to any place outside India;

¹ For such permission, see Gazette of India, 1947, Extraordinary, p. 325.

² Given by the A.O. 1946 for "British India".

- (b) transfer any security or create or transfer any interest in a security to or in favour of a person resident outside India;
- (c) transfer any security from a register in ¹[the Provinces] to a register outside India or do any act which is calculated to secure, or forms part of a series of acts which together are calculated to secure, the substitution for any security which is either in, or registered in ¹[the Provinces] of any security which is either outside or registered outside India;

"(e) acquire, hold or dispose of any foreign security";

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ny

rights in respect of the security is controlled shall, except with the general or special permission of the Reserve Bank, do any act whereby he recognises or gives effect to the substitution of another person as the person from whom he directly receives instructions, unless both the persons previously instructing him and the person substituted for that person were, immediately before the substitution, resident in India.

(3) The Reserve Bank may, for the purpose of securing that the provisions of this section are not evaded, require that the person transferring any security and the person to whom such security is transferred shall subscribe to a declaration that the transferee is not resident outside India.

(4) Notwithstanding anything contained in any other law, no person shall, except with the permission of the Reserve Bank,—

- (a) enter any transfer of securities in any register or book in which securities are registered or inscribed if he has any ground for suspecting that the transfer involves any contravention of the provisions of this section, or

- (b) enter in any such register or book, in respect of any security, whether in connection with the issue or transfer of it;

"(4A) Notwithstanding anything contained in any other law, no transfer of any share of a company registered in India made by a person also resident outside India shall be valid unless such transfer is confirmed by the Reserve Bank on an application made to it in this behalf by the transferor or the transfer."

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locked or sealed receptacle from which the person with whom it is deposited is not entitled to remove it without the authority of some other person, that other person shall be deemed to be the holder of the security;

¹ Subs. by the A.O. 1948 for "British India".

- (b) "nominee" means a holder of any security (including a bearer security) or any coupon representing dividends or interest who, as respects the exercise of any rights in respect of the security or coupon, is not entitled to exercise those rights except in accordance with instructions given by some other person, and a person holding a security or coupon as a nominee shall be deemed to act as nominee for the person who is entitled to give instructions either directly or

13A. Restrictions on payment in respect of certain securities.--(1) Notwithstanding anything contained in any other law or in any contract, agreement or other instrument, the holder of any security or class of securities notified in this behalf by the Central Govt. in respect of which the principal or interest or both is for the time being payable outside India in any country or place so notified shall not be entitled, except with the general or special permission of the Reserve Bank to have any such payment made at any place in India.

14. (1) Gazette, or document vinces to custody of

Provi- any such depository

(2) In this section the expressions 'holder' and 'security' shall have the same meanings as in sub-section (5) of section 13."

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(2) N an order ~~of the Reserve Bank except to, or to the order of, an authorised depository.~~

(3) Except with the general or special permission of the Reserve Bank, no authorised depository shall—

(a) accept or part with any security covered by an order under sub-section (1) whereby the security is transferred into the name of a person resident outside India, or

(b) do any act whereby he recognises or gives effect to the substitution of another person as the person from whom he directly receives instructions relating to such security unless the person previously so instructing him and the person substituted for that person were immediately before the substitution resident in India.

(4) Except with the general or special permission of the Reserve Bank, no person shall buy, sell or transfer any security, or document of title to a security covered by an order under sub-section (1) unless such security or ~~document~~ of title has been deposited in accordance with the order.

(5) Except with the general or special permission of the Reserve Bank, no capital moneys, interest or dividends in respect of any secur-

¹ Sub. by the A.O. 1948 for "British India".

ity covered by an order under sub-section (1) shall be paid in ~~the Provinces~~ ^{the Pro-India} except to or to the order of the authorised depository having the custody of the security.

(6) For the purposes of this section,—

(a) "authorised depository" means a person notified by the Central Government to be entitled to accept the custody of securities and ~~documents~~ ^{certificates} of title to securities, and

(b) "security" shall include coupons.

"no person shall, in India, and no person resident in India shall, outside India, ~~exercise the~~ create or issue any bearer certificate or coupon or so alter any document that it becomes a bearer certificate or coupon"

Restrictions on issue of bearer securities.

notification, the Central Government may, if it is of opinion that it is expedient so to do for the purpose of strengthening its foreign exchange position by notification in the official Gazette,—

Acquisition by Central Government of foreign securities.

(a) order the transfer to itself of any foreign securities specified in the notification at a price so specified, being a price which is, in the opinion of the Central Government, not less than the market value of the securities on the date of the notification, or

(b) direct the owner of any foreign securities specified in the notification to sell or procure the sale of the securities and thereafter to offer or cause to be offered the net foreign exchange proceeds of the sale to the Reserve Bank on behalf of the Central Government or to such person as the Reserve Bank may authorise for the purpose, at such price as the Central Government may fix, being a price which is in the opinion of the Central Government not less than the market rate of the foreign exchange when it is offered for sale.

(2) On the issue of a notification under clause (a) of sub-section (1).—

(a) the securities to which the notification relates shall forthwith vest in the Central Government free from any mortgage, pledge or charge, and the Central Government may deal with them in such manner as it thinks fit;

(b) the owner of any of the securities to which the notification relates and any person who is responsible for keeping any registers or books in which any of those securities are registered or inscribed, or who is otherwise concerned with the registration or inscription of any of those securities, shall do all such things as are necessary or as the Central Government or the Reserve Bank may order to be done, for the purpose of securing that—

(i) the securities and any ~~documents~~ ^{certificates} of title relating thereto are delivered to the Central Government and, in the case

(3) Except with the general or special permission of the Reserve Bank, no person resident in the States shall do any act whereby any business which is controlled by persons resident in India cease to be so controlled.

(4) Except with the general or special permis-

18. Certain provisions as to companies:--

(1) where there is served on any person resident in the states a notice in writing that the Central

Government or the Reserve Bank wishes any such requirements as are hereinafter mentioned to be complied with by any such company as is specified in Explanation I (hereafter in this sub-section and in sub-section (2) referred to as a foreign company) and that person can by doing or refraining from doing any act-

(a) cause the foreign company to comply with any of the requirements, or

(b) remove any obstacle to the foreign company complying with any of the requirements, or

(c) render it in any respect more probable that the foreign company will comply with any of the requirements,

then except so far as permission to the contrary may be given by the Central Govt. or, as the case may be, by the Reserve Bank, that person shall do or, as the case may be, refrain from doing that act.

(2) The requirements with respect to which a notice under sub-section (1) may be given are as follows that is to say, the foreign company shall-

(i) furnish to the Central Govt. or, as the case may be to the Reserve Bank such particulars as to its assets and business as may be mentioned in the notice;

(ii) sell or procure the sale to an authorised dealer of any foreign exchange mentioned in the notice being foreign exchange which is entitled to sell or of which it is entitled to procure the sale;

(iii) declare and pay such dividend as may be mentioned in the notice;

(iv) realise any of its assets mentioned in the notice in such manner as may be so mentioned;

(v) refrain from selling or transferring or

(2) Where for the purposes of this Act the Central Government or the Reserve Bank considers necessary or expedient to obtain and examine any information, book or other document in the possession of any person or which in the opinion of the Central Government or the Reserve Bank it is possible for such person to obtain and furnish, the Central Govt. or, as the case may be, the Reserve Bank may, order in writing, require any such person (whose name shall be specified in the order) to furnish, or to obtain and furnish to the Central Govt. or the Reserve Bank or any person specified in the order with such information, book or other document.

(3) If on a representation in writing, made by a person authorized in this behalf by the Central Government of the Reserve Bank, a District Magistrate subdivisional Magistrate, Presidency Magistrate or Magistrate of the first class, has reason to believe that a contravention of any of the provisions of this Act has been, or is being or is about to be committed in any place,

Or that a person to whom an order under sub-section (2) of this section has been or might be addressed, will not or would not produce the information, book or other document,

or where such information book or other document is not known to the Magistrate to be in the possession of any person,

or where the Magistrate considers that the purposes of any investigation or proceeding under this Act will be served by a general search or inspection

he may issue a search warrant and the person to whom such warrant is directed may search or inspect in accordance herewith and seize any book or other document, and the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898) relating to searches under that Code shall, so far as the same are applicable, apply to searches under this sub-section;

Provided that such warrant shall not be issued to any police officer below the rank of sub-inspector.

Explanation: In this sub-section, place includes a house, buildings tent, vehicle, vessel of aircraft.

n Power to
call for
information.

Supple-
mental
provisions.

tion is given in relation to any such person the Reserve Bank may by the same or a subsequent direction, declare the territory in which he shall be treated as being resident;

(b) in the case of any person to whom clause (a) does not apply the Reserve Bank may by general or special order declare the territory in which he shall be treated as being resident;

(c) in the case of any person resident in ^{India} ~~the Provinces~~ who leaves India, the Reserve Bank may give a direction to any bank that until the direction is revoked, any sum from time to time standing to the credit of that person and any security held on his behalf at any office or branch of that bank in ^{India} ~~the Provinces~~ specified in the direction, shall not be dealt with except with the permission of the Reserve Bank;

(d) any transactions with a branch of any business, whether carried on by a body corporate or otherwise, shall be treated in all respects as if the branch were a body corporate resident where the branch is situated;

(e) the making of any book entry or other statement recording a debit against a branch of any business in favour of the head office or any other branch of that business shall be treated as the acknowledgment of a debt whereby a right is created in favour of a person resident where the head office or other branch is situated.

(2) Nothing in this Act relating to the payment of any price or sum by the Central Government shall be construed as requiring the Central Government to pay that price or sum otherwise than in Indian currency or otherwise than in India.

(3) The Reserve Bank may give directions in regard to the making of payments and the doing of other acts by bankers, authorised dealers, travel agents or stock brokers and other persons who are authorised by the Reserve Bank to do anything in pursuance of this Act in the course of their business, as appear to it to be necessary or expedient for the purpose of securing compliance with the provisions of this Act and any rules, orders or directions made thereunder.

Contracts
in evasion
of this Act.

21. (1) No person shall enter into any contract or agreement which would directly or indirectly evade or avoid in any way the operation of any provision of this Act or of any rule, direction or order made thereunder.

(2) Any provision of, or having effect under, this Act that a thing shall not be done without the permission of the Central Government or the Reserve Bank, shall not render invalid any agreement by any person to do that thing, if it is a term of the agreement that that thing shall not be done unless permission is granted by the Central Government or the Reserve Bank, as the case may be; and it shall be an implied term of every contract governed by the law of any part of ^{the} ~~the~~

^{India}
[Provinces] that anything agreed to be done by any term of that contract which is prohibited to be done by or under any of the provisions of this Act except with the permission of the Central Government or the Reserve Bank, shall not be done unless such permission is granted.

(3) Neither the provisions of this Act nor any term (whether expressed or implied) contained in any contract that anything for which the permission of the Central Government or the Reserve Bank is required by the said provisions shall not be done without that permission, shall prevent legal proceedings being brought in ^{India} the Provinces], to recover any sum which, apart from the said provisions and any such term, would be due, whether as a debt, damages or otherwise, but—

(a) the said provisions shall apply to sums required to be paid by any judgment or order of any Court as they apply in relation to other sums; and

(b) no steps shall be taken for the purpose of enforcing any judgment

"(1) If any person contravenes the provisions of section 4, section 5, section 9 or sub-section (2) of section 12 or of any rule, direction or order made thereunder, he shall—

(a) be liable to such penalty not exceeding three times the value of the foreign exchange in respect of which the contravention has taken place, or five thousand rupees, whichever is more, as may be adjudged by the Director of Enforcement in the manner hereinafter provided, or

(b) upon conviction by a Court, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(1A) Whoever contravenes—

(a) any of the provisions of this Act or of any rule, direction or order made thereunder other than those referred to in sub-section (1) of this section 19 shall, upon conviction by a Court, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both,

(b) any direction or order made under section 19 shall, upon conviction by a Court, be punishable with fine which may extend to two thousand rupees.

(1B) Any Court trying a contravention under sub-section (1) or sub-section (1A) and the authority adjudging any contravention under clause (a) of sub-section (1) may, if it thinks fit, and in addition to any sentence or penalty which it may impose for such contravention, direct that any currency, security,

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"23C. Offences by companies.-(1) If the person committing a contravention is a company, every person who at the time the contravention was committed, was in-charge of, and was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to be proceeded against and punished accordingly:

(2) Notwithstanding anything contained in sub-section (1), where a contravention under this Act has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager secretary or other officer of the company such director manager secretary or other officer also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation-- For the purposes of this section,--

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

23D. Power to adjudicate.--(1) For the purpose of adjudging under clause (a) of sub-section (1) of section 23 whether any person has committed a contravention, the Director of Enforcement shall hold an inquiry in the prescribed manner after giving that person a reasonable opportunity of being heard and if, on such inquiry, he is satisfied that the person committed the contravention, he may impose such penalty as he thinks fit in accordance with the provisions of the said section 23:

Provided that if, at any stage of the inquiry, the Director of Enforcement is of opinion that having regard to the circumstances of the case, the penalty which he is empowered to impose would not be adequate, he shall, instead of imposing any penalty himself, make a complaint in writing to the Court.

and shall not affect any person without giving him reasonable opportunity of being heard; and subject thereto the

AND WHEREAS it is expedient to make provision for the completion of the recovery of the said duty, and for a certain incidental matter;

It is hereby enacted as follows:—

1. (1) This Act may be called the Sugar (Temporary Excise Duty) Act, 1947. Short title and extent.

(2) It extends to all the Provinces of India.

XXV of 1946.

2. The expiry in due course of the Sugar (Temporary Excise Duty) Ordinance, 1946, shall not affect the liability to pay the duty levied thereby or the liability to any penalty or punishment incurred thereunder, and for the purposes of completing and enforcing the recovery of the said duty and penalties, all the provisions of the said Ordinance shall, on its expiry, continue to have effect as if they were enacted in this Act. Continuance of provisions for recovering excise duty on sugar.

III of 1930.

XXV of 1946.

3. Without prejudice to the provisions of section 64A of the Indian Sale of Goods Act, 1930, where in any contract for the sale of any sugar on which a duty of excise was levied by the Sugar (Temporary Excise Duty) Ordinance, 1946, the seller was prevented by the operation of any law then in force from adding to or including in the contract price an amount equivalent to the duty payable on the sugar, he shall, provided that he has paid the said duty or that there was included in the price which he himself paid for the sugar an amount equivalent as aforesaid, be entitled to be paid such amount by the buyer and to sue for and recover such amount. Effect of levy of duty on certain sales

THE EXPLOSIVES (TEMPORARY PROVISIONS) ACT, 1947.

Repealed
C.A./XLI/53

Act No. X of 1947.

[With March, 1947.]

An Act to continue for a limited period powers to exempt operations affecting ammunition, explosives and inflammable substances from certain restrictions, and to regulate those operations.

WHEREAS it is expedient to continue for a limited period powers to exempt the loading, unloading, handling, storage and conveyance of ammunition, explosives and inflammable substances from certain restrictions, and to provide in the interests of safety for the regulation of such operations;

It is hereby enacted as follows:—

1. (1) This Act may be called the Explosives (Temporary Provisions) Act, 1947. Short title, extent, commencement and duration.

¹ Subs. by the A.O. 1948, for "the whole of British India".

² For Statement of Objects and Reasons, see Gazette of India, 1947, Pt. V, p. 19.

(2) It extends to [all the Provinces of India].

Provided that any declaration or order made or deemed to have been made under section 2 shall apply only to the ²[port of Vizagapatam] and to railways over which ammunition, explosives or inflammable substances are carried to or from those ports.

(3) It shall come into force on the 25th day of March 1947, and shall remain in force for a period of two years only.

Powers in respect of ammunition, explosives and inflammable substances.

2. (1) The Central Government, if it considers it necessary or expedient so to do, may, by notification in the official Gazette, declare that such restrictions imposed by or under any law for the time being in force as may be specified in the declaration shall not apply to the loading, unloading, handling, storage or conveyance of ammunition, explosives or inflammable substances, in such circumstances as may be so specified.

(2) When a declaration has been made under sub-section (1), the Central Government or any authority authorised by it in writing in this behalf may by order make such provision as appears to it to be required in the interests of safety for regulating the loading, unloading, handling, storage and conveyance of ammunition, explosives and inflammable substances to which the declaration relates.

Continuance of existing orders.

3. All declarations and orders made under rule 88 of the Defence of India Rules or that rule as continued in force by the Emergency Provisions (Continuance) Ordinance, 1946, and in force immediately before the commencement of this Act shall, so far as they are not inconsistent with the provisions of this Act, continue in force and be deemed to have been made under the corresponding provision of section 2.

XX of 1946

Penalty.

4. If any person contravenes any order made or deemed to have been made under sub-section (2) of section 2, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Savings.

5. Any declaration or order made or deemed to have been made under section 2 shall have effect notwithstanding anything inconsistent therewith contained in any other law, and no such declaration or order shall be called in question in any Court.

Protection of action taken.

6. (1) No suit or other legal proceeding shall lie against the Crown for any damage caused or likely to be caused by anything in good faith done or intended to be done under this Act or any declaration or order made or deemed to have been made thereunder.

(2) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any declaration or order made or deemed to have been made thereunder.

Substituted by the A.O. 1948, for "the whole of British India".

Substituted by the A.O. 1948 for "Port of Karachi and Vizagapatam".

THE RAILWAYS (TRANSPORT OF GOODS) ACT, 1947.

Act No. XII of 1947.

[17th March, 1947.]

An Act to confer for a limited period special powers for regulating the transport of goods on railways.

WHEREAS it is expedient to confer for a limited period special powers for regulating the transport of goods on railways;

It is hereby enacted as follows:—

1. (1) This Act may be called the Railways (Transport of Goods) Act, 1947.

Short title,
extent,
commence-
ment and
duration.

(2) It extends to ²all the Provinces of India;

(3) It shall come into force on the 25th day of March, 1947, and shall remain in force ³upto the 26th day of March, 1948.]

2. (1) In this Act,—

Interpre-
tation.

(a) "Chief Commissioner" means the Chief Commissioner of a Chief Commissioner's Province;

(b) "grains and pulses" means *bajree*, barley, beans, black gram, *chowlee* seeds, *chundi*, dry cow-peas, *dhall*, gram, parched gram, horse gram, Indian corn, *jowari*, *karamony*, *khesare*, *moong*, *mussoor*, *mutt*, oats, *oorid*, paddy, peas, *raggi*, *raigeera*, rice (including beaten or pounded rice), common sago, sun-dried tapioca, *toor* and wheat;

IX of 1890.

(c) "railway administration" has the meaning assigned to it in the Indian Railways Act, 1890.

(2) For the purposes of this Act the transport of goods shall be deemed to be sponsored only if such transport—

(a) is required on the written demand of, or

(b) is in accordance with any programme of transport drawn up in writing by, or

(c) is certified in his behalf on the consignment note relating to the goods by—

⁴[the Central Government or any person authorised in writing in this behalf by that Government or with respect to items 10 and 17 of the schedule by a Provincial Government or by a Chief Commissioner or by the Government of an Indian State.]

¹ For Statement of Objects and Reasons, see Gazette of India, 1947, Pt. V, p. 16.

² Subs. by the A.O. 1948, for "the whole of British India".

³ Subs. by s. 2 of the Railways (Transport of Goods) (Amendment) Act, 1948 (18 of 1948) for "for one-year only".

⁴ Subs. by s. 3, *ibid*, for certain original words,

Power to give directions in regard to the transport of goods by railways.

3. The Central Government or any person authorised in this behalf by the Central Government by notification in the official Gazette may, by general or special order, direct any railway administration—

- (a) to give special facilities or preference ²[subject to such wagon quotas as the Central Government or the person so authorised may fix,] for the transport of any of the goods specified in the second column of the Schedule, subject to compliance with the conditions, if any, set out in the corresponding entry in the third column of the Schedule, or ²[if the Central Government or the officer so authorised deems it necessary for reasons of urgent public interest so to do of any goods or category of goods not so specified, or]
- (b) to refuse to carry such goods or classes of goods as may be specified in the order, either absolutely or between places so specified.

Directions to be complied with.

4. Notwithstanding anything to the contrary contained in the Indian Railways Act, 1890, every railway administration shall be bound to comply with any direction given to it under section 3.

IX of 1890.

Protection of action taken.

5. No suit or other legal proceedings shall lie against the Crown or any railway administration or any person for any damage caused or likely to be caused in consequence of any direction issued under section 3 or of the compliance of any railway administration therewith, nor shall any railway administration have any liability, whether under the Indian Railways Act, 1890, or otherwise, by reason only of its compliance with any such direction.

IX of 1890.

Power to amend Schedule.

6. The Central Government may from time to time by notification in the official Gazette amend the Schedule so as to include therein goods of other descriptions or exclude therefrom goods of any description or vary in respect of any description of goods the conditions set out in the third column of the Schedule; and thereupon the Schedule shall have effect as if it had been so enacted.

THE SCHEDULE.

(See section 3)

Serial No.	Description of goods.	Conditions for special transport facilities or preference.
1.	Cattle food and cattle fodder	Nil.
2.	Coal and coke (other than Railway) when despatched from collieries	Nil.
3.	Cotton, silk and woollen piecegoods, blankets, twist yarn and cotton waste when consigned from mills or by mill agents	Nil.
4.	Empty containers for food, petroleum and other industrial products	Nil.
5.	Firewood and charcoal	Nil.

¹ For such notification, see Gazette of India, 1948, Pt. I, p. 383.

² Ins. by s. 4, of the Railways (Transport of Goods) (Amendment) Act, 1946 (13 of 1946).

³ Ins. by s. 5, *ibid.*, for the original Schedule as amended from time to time by

Serial No.	Description of goods.	Conditions for special transport facilities or preference.
6.	Foodstuffs including fish and other perishables [tinned, canned, bottled, processed or packed including all grains and pulses, wheat products and flour of other grains and pulses, ghee, butter, cooking fats and edible vegetable oils, salt (other than hide salt), sugar, gur and jaggery].	Nil,
7.	Livestock.	Nil,
8.	Materials and stores of the Posts and Telegraphs Department.	Nil.
9.	Medical stores, hospital equipment and pharmaceutical goods.	Nil.
10.	Military or police stores and equipment.	When transport is sponsored
11.	Petroleum and all petroleum products.	When consigned by oil companies and importers of petroleum products.
12.	Plant, materials and stores for maintenance and construction of buildings and roads, and for industrial and agricultural development projects, including the "Grow-More-Food" campaign, water-works, irrigation, hydro-electric and sewage disposal schemes.	Nil.
13.	Plant, stores, raw materials for and finished products of the following major industries:— Cement. Chemicals. Collieries. Distilleries. Fertiliser factories. Iron and steel. Jute. Match factories. Non-ferrous and alloy factories. Paper. Rice and flour mills. Sugar. Textile ginning and pressing mills. Vegetable ghee (Vanaspati) and vegetable oil.	Nil,
14.	Plant, stores and raw materials for and finished products of the following important industries:— Bobbin factories. Bone mills. Cigarette, cigar and tobacco factories. Electrical industries and electricity supply undertakings. Glass and ceramic factories. Mining industry. Oil companies. Ordnance factories. Paint and varnish factories. Printing, stationery and newsprint. Refractory brick factories. Rubber factories. Soap factories. Starch factories. Tanneries and leather, boot and shoe factories. Tea gardens.	Nil.
15.	Railway coal, material, stores and equipment.	Nil
16.	Raw cotton, wool and silk.	Nil,
17.	Stores including medical stores for relief in times of famine or other emergency.	When transport is sponsored,
18.	Wagons required for the direct loading and unloading of ships in the port area.	Nil,]

THE INDUSTRIAL DISPUTES ACT, 1947.

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CHAPTER III.

Reference of Disputes to Boards, Courts or Tribunals.

10. Reference of disputes to Boards, Courts or Tribunals.

CHAPTER IV.

Procedure, powers and duties of Authorities.

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38. Power to make rules.
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The Schedule.—Industries which may be declared to be public utility services under sub-clause (vi) of clause (n) of section 2.)

¹Act No. XIV of 1947.

[11th March, 1947.]

An Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes.

WHEREAS it is expedient to make provision for the investigation and settlement of industrial disputes, and for certain other purposes hereinafter appearing; It is hereby enacted as follows:—

¹ For Statement of Objects and Reasons, see Gazette of India, 1946, Pt. V, p. 239.

CHAPTER I

Preliminary.

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Industrial Disputes Act, 1947.

(2) It extends to ¹[all the Provinces of India];

(3) It shall come into force on the first day of April, 1947.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “appropriate Government” means—

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, ²* * * or by a railway company operating a Federal Railway or in relation to an industrial dispute concerning a mine, oilfield, or a major port, the Central Government, and

(ii) in relation to any other industrial dispute, the Provincial Government;

(b) “award” means an interim or final determination by an Industrial Tribunal of any industrial dispute or of any question relating thereto;

(c) “Board” means a Board of Conciliation constituted under this Act;

(d) “conciliation officer” means a conciliation officer appointed under this Act;

(e) “conciliation proceeding” means any proceeding held by a conciliation officer or Board under this Act;

(f) “Court” means a Court of Inquiry constituted under this Act;

(g) “employer” means—

(i) in relation to an industry carried on by or under the authority of any department of ³[the Central Government or a Provincial Government], the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;

¹ Subs. by the A.O. 1948, for “the whole of British India”.

² The words “by the Federal Railway Authority” were rep. by the A.O. 1948.

³ Subs. by the A.O. 1948 for “a Government in British India”.

(Cha: *Part I.—Preliminary.*)

- (h) "Federal Railway" has the same meaning as in the Government of India Act, 1935; 26 Geo. 5,
c. 2.
- (i) a person shall be deemed to be "independent" for the purpose of his appointment as the chairman or other member of a Board, Court or Tribunal, if he is unconnected with the industrial dispute referred to such Board, Court or Tribunal or with any industry directly affected by such dispute;
- (j) "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;
- (k) "industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;
- (l) "lock-out" means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him;
- (m) "prescribed" means prescribed by rules made under this Act;
- (n) "public utility service" means—
- (i) any railway service;
 - (ii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;
 - (iii) any postal, telegraph or telephone service;
 - (iv) any industry which supplies power, light or water to the public;
 - (v) any system of public conservancy or sanitation;
 - (vi) any industry specified in the Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the official Gazette declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification:

Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time if in the opinion of the appropriate Government public emergency or public interest requires such extension.

¹ For such notifications, see Gazette of India, 1947, Pt. I, p. 664 and *ibid*, 1948, Pt. I, p. 518.

(Chapter I.—Preliminary.—Chapter II.—Authorities under this Act.)

- (o) "railway company" means a railway company as defined in section 3 of the Indian Railways Act, 1890;
- (p) "settlement" means a settlement arrived at in the course of a conciliation proceeding;
- (q) "strike" means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment;
- (r) "Tribunal" means an Industrial Tribunal constituted under this Act;
- (s) "workman" means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military or air service of the Crown.

CHAPTER II.

Authorities under this Act.

Works
Committee.

3. (1) In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment so however that the number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926.

XVI
1926.

(2) It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.

Concilia-
tion
officers.

4. (1) The appropriate Government may, by notification in the official Gazette, appoint such number of persons as it thinks fit, to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.

(Chapter II.—Authorities under this Act.)

(2) A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

5. (1) The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Board of Conciliation for promoting the settlement of an industrial dispute.

Boards of
Concilia-
tion.

(2) A Board shall consist of a chairman and two or four other members, as the appropriate Government thinks fit.

(3) The chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party:

Provided that, if any party fails to make a recommendation as aforesaid within the prescribed time, the appropriate Government shall appoint such persons as it thinks fit to represent that party.

(4) A Board, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number:

Provided that, if the appropriate Government notifies the Board that the services of the chairman or of any other member have ceased to be available, the Board shall not act until a new chairman or member, as the case may be, has been appointed.

6. (1) The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Court of Inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute.

Courts of
Inquiry.

(2) A Court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the chairman.

(3) A Court, having the prescribed quorum, may act notwithstanding the absence of the chairman or any of its members or any vacancy in its number:

Provided that, if the appropriate Government notifies the Court that the services of the chairman have ceased to be available, the Court shall not act until a new chairman has been appointed.

7. (1) The appropriate Government may constitute one or more Industrial Tribunals for the adjudication of industrial disputes in accordance with the provisions of this Act.

Industrial
Tribunals.

(2) A Tribunal shall consist of such number of members as the appropriate Government thinks fit. Where the Tribunal consists of two or more members, one of them shall be appointed as the chairman.

(3) Every member of the Tribunal shall be an independent person

(Chapter II.—Authorities under this Act.—Chapter III.—References of Disputes to Boards, Courts or Tribunals.)

(a) who is or has been a Judge of a High Court or a District Judge, or

(b) is qualified for appointment as a Judge of a High Court:

Provided that the appointment to a Tribunal of any person not qualified under part (a) shall be made in consultation with the High Court of the Province in which the Tribunal has or is intended to have, its usual place of sitting.

Filling of
vacancies.

8. (1) If the services of the chairman of a Board or of the chairman or other member of a Court or Tribunal cease to be available at any time, the appropriate Government shall, in the case of a chairman, and may in the case of any other member, appoint another independent person to fill the vacancy, and the proceedings shall be continued before the Board, Court or Tribunal so reconstituted.

(2) Where a Court or Tribunal consist of one person only and his services cease to be available the appropriate Government shall appoint another independent person in his place, and the proceedings shall be continued before the person so appointed.

(3) Where the services of any member of a Board other than the chairman have ceased to be available, the appropriate Government shall appoint in the manner specified in sub-section (3) of section 5 another person to take his place, and the proceedings shall be continued before the Board so reconstituted.

Finality of
orders con-
stituting a
Board,
Court or
Tribunal.

9. No order of the appropriate Government appointing any person as a member of a Board, Court or Tribunal shall be called in question in any manner.

CHAPTER III.

Reference of Disputes to Boards, Courts or Tribunals.

Reference
of disputes
to Boards,
Courts or
Tribunals.

10. (1) If any industrial dispute exists or is apprehended, the appropriate Government may, by order in writing,—

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

(c) refer the dispute to a Tribunal for adjudication:

Provided that, where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced.

(Chapter III.—References of Disputes to Boards, Courts or Tribunals.

Chapter IV.—Procedure, powers and duties of Authorities.)

(2) Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court or Tribunal, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly.

(3) Where an industrial dispute has been referred to a Board or Tribunal under this section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

CHAPTER IV.

Procedure, powers and duties of Authorities.

11. (1) Conciliation Officers, Boards, Courts and Tribunals shall, subject to the provisions of this Act, follow such procedure as may be prescribed.

Procedure
and powers
of concilia-
tion officers,
Boards,
Courts and
Tribunals.

(2) A conciliation officer or a member of a Board, Court or Tribunal may for the purpose of inquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates

V of 1908.

(3) Every Board, Court and Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:—

- (a) enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents and material objects;
- (c) issuing commissions for the examination of witnesses;
- (d) in respect of such other matters as may be prescribed;

and every inquiry or investigation by a Board, Court or Tribunal, shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code.

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1860.

(4) A conciliation officer may call for and inspect any document which he has ground for considering to be relevant to the industrial dispute.

(5) With the consent of all parties to the dispute, a Court or Tribunal may, if it so thinks fit, appoint one or more persons as assessors to advise it in the proceedings.

(6) Every conciliation officer and every member of a Board, Court or Tribunal shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

XLV of
1860.

(Chapter IV.—Procedure, powers and duties of Authorities.)

Duties of
conciliation
officers.

12. (1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under section 22 has been given, shall, hold conciliation proceedings in the prescribed manner.

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board or Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government.

Duties of
Boards.

13. (1) Where a dispute has been referred to a Board under this Act, it shall be the duty of the Board to endeavour to bring about a settlement of the same and for this purpose the Board shall, in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(2) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the Board shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(3) If no such settlement is arrived at, the Board shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the proceedings and steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with

(Chapter IV.—Procedure, powers and duties of Authorities.)

a full statement of such facts and circumstances, its findings thereon, the reasons on account of which, in its opinion, a settlement could not be arrived at and its recommendations for the determination of the dispute.

(4) If, on the receipt of a report under sub-section (3) in respect of a dispute relating to a public utility service, the appropriate Government does not make a reference to a Tribunal under section 10, it shall record and communicate to the parties concerned its reasons therefor.

(5) The Board shall submit its report under this section within two months of the date of the notice under section 22, or within such shorter period as may be fixed by the appropriate Government:

Provided that the appropriate Government may from time to time extend the time for the submission of the report by such further periods not exceeding two months in the aggregate:

Provided further that the time for the submission of the report may be extended by such period as may be agreed on in writing by all the parties to the dispute.

14. A Court shall inquire into the matters referred to it and report thereon to the appropriate Government ordinarily within a period of six months from the commencement of its inquiry.

Duties of
Courts.

15. (1) Where an industrial dispute has been referred to a Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, as soon as practicable on the conclusion thereof, submit its award to the appropriate Government.

Duties of
Tribunals.

(2) On receipt of such award, the appropriate Government shall by order in writing declare the award to be binding:

Provided that where the appropriate Government is a party to the dispute and in its opinion it would be inexpedient on public grounds to give effect to the whole or any part of the award, it shall on the first available opportunity lay the award together with the statement of its reasons for not making a declaration as aforesaid before the Legislative Assembly of the Province, or where the appropriate Government is the Central Government, before the ¹[Central Legislature], and shall, as soon as may be, cause to be moved therein a resolution for the consideration of the award; and the ²[Legislative Assembly or, as the case may be, the Central Legislature], by its resolution, confirm, modify, or reject the award.

(3) On the passing of a resolution under the proviso to sub-section (2), unless the award is rejected thereby, the appropriate Government shall by order in writing declare the award as confirmed or modified by the resolution, as the case may be, to be binding.

1 Subs. by the A.O. 1948 for "Central Legislative Assembly".

2 Subs. by the A.O. 1948 for "Legislative Assembly may".

(Chapter IV.—Procedure, powers and duties of Authorities.)

(4) Save as provided in the proviso to sub-section (3) of section 19, an award declared to be binding under this section shall not be called in question in any manner.

Form of
report or
award.

16. The report of a Board or Court and the award of a Tribunal shall be in writing and shall be signed by all the members of the Board, Court or Tribunal, as the case may be:

Provided that nothing in this section shall be deemed to prevent any member of the Board, Court or Tribunal from recording a minute of dissent from a report or award from any recommendation made therein.

Publication
of reports
and
awards.

17. The report of a Board or Court and the award of a Tribunal, together with any minute of dissent recorded therewith, shall, within a period of one month from the date of its receipt by the appropriate Government, be published in such manner as it thinks fit.

Persons on
whom
settlements
and awards
are binding.

18. A settlement arrived at in the course of conciliation proceedings under this Act or an award which is declared by the appropriate Government to be binding under sub-section (2) of section 15 shall be binding on—

- (a) all parties to the industrial dispute;
- (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board or Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;
- (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

Period of
operation
of settle-
ments and
awards.

19. (1) A settlement arrived at in the course of a conciliation proceeding under this Act shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

(Chapter IV.—Procedure, powers and duties of Authorities.)

(3) An award declared by the appropriate Government under section 15 to be binding shall come into operation on such date as may be specified by the appropriate Government and shall remain in operation for such period, not exceeding one year, as may be fixed by that Government:

Provided that if, of its own motion or on the application of any party bound by the award, the appropriate Government considers that there has been a material change in the circumstances on which the award was based, it may refer the award to a Tribunal for a decision whether or not the award should, by reason of such change cease to be in operation before the expiry of the period so fixed, and the period of operation of the award should be determined by the decision of the tribunal on such reference.

20. (1) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock-out under section 22 is received by the conciliation officer or on the date of the order referring the dispute to a Board, as the case may be.

Comment-
cement and
conclusion
of proceed-
ings.

(2) A conciliation proceeding shall be deemed to have concluded—

- (a) where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute;
- (b) where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate Government or when the report of the Board is published under section 17, as the case may be, or
- (c) when a reference is made to a Court or Tribunal under section 10 during the pendency of conciliation proceedings.

(3) Proceedings before a Tribunal shall be deemed to have commenced on the date of the reference of a dispute for adjudication and such proceedings shall be deemed to have concluded when the award is published by the appropriate Government under section 17, or where an award has been laid before the Legislative Assembly ¹[or Central Legislature] under the proviso to sub-section (2) of section 15, when the resolution of the Legislative Assembly ¹[or Central Legislature] thereon is passed.

21. There shall not be included in any report or award under this Act any information obtained by a conciliation officer, Board, Court or Tribunal in the course of any investigation or inquiry as to a trade union or as to any individual business (whether carried on by a person, firm or company) which is not available otherwise than through the evidence given before such officer, Board, Court or Tribunal, if the trade union, person, firm or company, in question has made a request in writing to the conciliation officer, Board, Court or Tribunal, as the case may be, that such information shall be treated as confidential; nor shall such conciliation officer or any individual member of the Board,

Certain
matters to
be kept
confiden-
tial.

¹ Ins. by the A.O. 1948.

(Chapter IV.—*Procedure, powers and duties of Authorities.*—Chapter V.—*Strikes and lock-outs.*)

Court or Tribunal or any person present at or concerned in the proceedings disclose any such information without the consent in writing of the secretary of the trade union or the person, firm or company in question, as the case may be:

Provided that nothing contained in this section shall apply to a disclosure of any such information for the purposes of a prosecution under section 193 of the Indian Penal Code.

XIV of
1880.

CHAPTER V.

Strikes and lock-outs.

Prohibition
of strikes
and lock-
outs.

22. (1) No person employed in a public utility service shall go on strike in breach of contract—

- (a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
- (b) within fourteen days of giving such notice; or
- (c) before the expiry of the date of strike specified in any such notice as aforesaid; or
- (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(2) No employer carrying on any public utility service shall lock-out any of his workmen—

- (a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking out; or
- (b) within fourteen days of giving such notice; or
- (c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or
- (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(3) The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.

(4) The notice of strike referred to in sub-section (1) shall be given by such number of persons to such person or persons and in such manner as may be prescribed.

(5) The notice of lock-out referred to in sub-section (2) shall be given in such manner as may be prescribed.

(Chapter V.—Strikes and lock-outs.—Chapter VI.—Penalties.)

(6) If on any day an employer receives from any persons employed by him any such notices as are referred to in sub-section (1) or gives to any persons employed by him any such notices as are referred to in sub-section (2), he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe the number of such notices received or given on that day.

23. No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out—

General prohibition of strikes and lock-outs.

- (a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;
- (b) during the pendency of proceedings before a Tribunal and two months after the conclusion of such proceedings; or
- (c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

24. (1) A strike or a lock-out shall be illegal if—

Illegal strikes and lock-outs.

- (i) it is commenced or declared in contravention of section 22 or section 23; or
- (ii) it is continued in contravention of an order made under sub-section (3) of section 10.

(2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, or Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub-section (3) of section 10.

(3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

25. No person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lock-out.

Prohibition of financial aid to illegal strikes and lock-outs.

CHAPTER VI.

Penalties.

26. (1) Any workman who commences, continues or, otherwise acts in furtherance of, a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Penalty for illegal strikes and lock-outs.

(Chapter VI.—Penalties.—Chapter VII.—Miscellaneous.)

(2) Any employer who commences, continues, or otherwise acts in furtherance of a lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

Penalty for instigation, etc.

27. Any person who instigates or incites others to take part in or otherwise acts in furtherance of, a strike or lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalty for giving financial aid to illegal strikes and lock-outs.

28. Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lock-out shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalty for breach of settlement or award.

29. If any person commits a breach of any term of any settlement or award which is binding on him under this Act, he shall on his first conviction therefor be punishable with fine which may extend to two hundred rupees and in the event of a second or subsequent conviction, with fine which may extend to five hundred rupees.

Penalty for disclosing confidential information.

30. Any person who wilfully discloses any such information as is referred to in section 21 in contravention of the provisions of that section shall, on complaint made by or on behalf of the trade union or individual business affected, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalty for other offences.

31. (1) Any employer who contravenes the provisions of section 33 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever contravenes any of the provisions of this Act or any rule made thereunder shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one hundred rupees.

CHAPTER VII:

Miscellaneous.

Offence by companies, etc.

32. Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

33. No employer shall during the pendency of any conciliation proceedings or proceedings before a Tribunal, in respect of any industrial dispute, alter to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings, nor, save with the express permission in writing of the conciliation officer, Board or Tribunal, as the case may be, shall he during the pendency of such proceedings, discharge, dismiss, or otherwise punish any such workmen, except for misconduct not connected with the dispute.

Conditions of service, etc. to remain unchanged during pendency of proceedings.

34. (1) No Court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government.

Cognizance of offences.

(2) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

35. (1) No person refusing to take part or to continue to take part in any strike or lock-out which is illegal under this Act shall, by reason of such refusal or by reason of any action taken by him under this section, be subject to expulsion from any trade union or society, or to any fine or penalty, or to deprivation of any right or benefit to which he or his legal representatives would otherwise be entitled, or be liable to be placed in any respect, either directly or indirectly, under any disability or at any disadvantage as compared with other members of the union or society, anything to the contrary in the rules of a trade union or society notwithstanding.

Protection of persons.

(2) Nothing in the rules of a trade union or society requiring the settlement of disputes in any manner shall apply to any proceeding for enforcing any right or exemption secured by this section, and in any such proceeding the Civil Court may, in lieu of ordering a person who has been expelled from membership of a trade union or society to be restored to membership, order that he be paid out of the funds of the trade union or society such sum by way of compensation or damages as that Court thinks just.

36 (1) A workman who is a party to an industrial dispute shall be entitled to be represented in any proceedings under this Act by an officer of a registered trade union, and any employer who is a party to an industrial dispute shall be entitled to be represented in any such proceedings by an officer of an association of employers.

Representation of parties.

(2) No party to an industrial dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act.

(3) A party to an industrial dispute may be represented by a legal practitioner in any proceedings before a Court or Tribunal.

37. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

Protection of action taken under the Act

(Chapter VII.—Miscellaneous.)

Power to
make
rules.

38. (1) The appropriate Government may, subject to the condition of previous publication, make rules for the purpose of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the powers and procedure of conciliation officers, Boards, Courts and Tribunals including rules as to the summoning of witnesses, the production of documents relevant to the subject-matter of an inquiry or investigation, the number of members necessary to form a quorum and the manner of submission of reports and awards;
- (b) the constitution and functions of and the filling of vacancies in Works Committees, and the procedure to be followed by such Committees in the discharge of their duties;
- (c) the allowances admissible to members of Courts, Boards, and Tribunals and to assessors and witnesses;
- (d) the ministerial establishment which may be allotted to a Court, Board or Tribunal and the salaries and allowances payable to members of such establishments;
- (e) the manner in which and the persons by and to whom notice of strike or lock-out may be given and the manner in which such notices shall be communicated;
- (f) the conditions subject to which parties may be represented by legal practitioners in proceedings under this Act before a Court or Tribunal;
- (g) any other matter which is to be or may be prescribed

(3) Rules made under this section may provide that a contravention thereof shall be punishable with fine not exceeding fifty rupees

Delegation
of power.

39. The appropriate Government may by order direct that its power under section 3 shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercised by any officer or authority subordinate to that Government.

Repeal of
Act VII of
1929.

40. The Trade Disputes Act, 1929, is hereby repealed

THE SCHEDULE.

Industries which may be declared to be public utility services under sub-clause (v) of clause (n) of section 2.

1. Transport (other than railways) for the carriage of passengers or goods, by land, water or air.
2. Coal.
3. Cotton textiles.
4. Foodstuffs.
5. Iron and steel.

¹ Power delegated to Chief Labour Commissioner (Central), see Gazette of India, 1947, Pt. I, p. 1362.

THE ARMED FORCES (EMERGENCY DUTIES) ACT, 1947.

'ACT No. XV of 1947.

[20th March, 1947.]

An Act to enable duties in connection with vital services to be imposed in an emergency on the Armed Forces of the ~~crown~~.

WHEREAS it is expedient to enable duties in connection with vital services to be imposed in an emergency on the Armed Forces of the Crown;

It is hereby enacted as follows:—

1. ^{2*} This Act may be called the Armed Forces (Emergency Duties) Act, 1947. Short title and extent.

2* * * *

2. (1) The Central Government may, by notification in the official Gazette, declare any specified service ^{State} [in a Province, or, if so requested by the Government of an ~~Assenting State~~, any specified service in that State] to be a service of vital importance to the community:

Emergency duties of Armed Forces.

11/5)

Provided that such notification shall remain in force for one month in the first instance, but may be extended, from time to time, by a like notification.

VIII of 1911.

XIV of 1932.

XXXIV of 1934.

(2) Upon a declaration being made under sub-section (1) and until it is rescinded, it shall be the duty of every person subject to the Indian Army Act, 1947, or the Indian Air Force Act, 1932, or the ~~Naval Discipline Act~~, in the form in which it is set forth in the First Schedule ^{to the Indian Navy (Discipline) Act, 1934}, to obey any command given by any superior officer in relation to employment upon or in connection with the service specified in the declaration; and every such command shall be deemed to be a lawful command within the meaning and for the purposes of the said Acts.

11/5)

3. Every command given, after the 30th day of September, 1946 and before the commencement of this Act, to any person referred to in sub-section (2) of section 2 by any superior officer in relation to employment upon or in connection with any such service as the Central Government may, by notification in the official Gazette, specify in this behalf, shall be deemed to have been a lawful command within the meaning and for the purposes of the Acts referred to in that sub-section, so however that no such person shall be punished by reason only of his not having obeyed any such command.

Validation of certain past commands.

¹ For Statement of Objects and Reasons, see Gazette of India, 1947, Pt. V, p. 129.

² The brackets and figure "(1)" and sub-section (2) rep. by s. 2 of the Armed Forces (Emergency Duties) Amendment Act, 1947 (4 of 1948).

³ Ins. by s. 3, *ibid*.

THE TRADING WITH THE ENEMY (CONTINUANCE
OF EMERGENCY PROVISIONS) ACT, 1947.¹Act No. XVI of 1947.

[20th March, 1947]

An Act to provide for the continuance of certain provisions of the Defence of India Rules relating to the control of trading with States, and persons and firms belonging to States at war with His Majesty, and the custody of the property belonging to them.

Government
India

WHEREAS it is expedient to provide for the continuance of certain provisions of the Defence of India Rules relating to the control of trading with States, and persons and firms belonging to States at war with His Majesty, and the custody of the property belonging to them;

It is hereby enacted as follows:—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Trading with the Enemy (Continuance of Emergency Provisions) Act, 1947.

(2) It extends to ^{the whole} ~~all the Provinces of India~~, and applies also to ~~British subjects and servants of the Crown in any part of India, and to British subjects who are domiciled in any part of India, wherever they may be.~~ ^{all citizens of India outside India}

(3) It shall come into force on the 25th day of March, 1947.

Continu-
ance of
certain
emergency
provisions.

2. (1) Notwithstanding the expiry of the Defence of India Act, 1939, and the Emergency Provisions (Continuance) Ordinance, 1946—

XXXV of
1939.
XX of

(a) the provisions of the Defence of India Rules mentioned in the first column of the Schedule to this Act shall continue in force, and shall have effect subject to the modifications specified in the second column thereof;

(b) any order or other instrument made or deemed to be made under or in pursuance of any of the said provisions and in force immediately before the commencement of this Act shall continue in force so far as consistent with the provisions as continued in force by this section and be deemed to be made under or in pursuance of the provisions so continued in force.

(2) The references in sub-section (1) to the Defence of India Rules shall be construed as references to those Rules as modified and continued in force by the Emergency Provisions (Continuance) Ordinance, 1946.

XX of
1946.

¹ For Statement of Objects and Reasons, see Gazette of India, 1947, Pt. V, p. 170.
² Subs. by the A.O. 1948 for "the whole of British India".

Emergency Provisions).

3. The provisions of the Defence of India Rules as continued in force by section 2 and all orders made or deemed to be made under such provisions shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Effect of rules, etc., inconsistent with other enactments.

4. (1) The Central Government may by order direct that any power or duty which by or under any of the provisions as continued in force by section 2 is conferred or imposed upon the Central Government, shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer or authority subordinate to that Government or by any other authority.

Delegations.

(2) All orders delegating any power or duty conferred or imposed by any of the provisions continued in force by section 2 made by the Central Government before the commencement of this Act and in force immediately before such commencement, shall continue in force and be deemed to be made by the Central Government under this section.

5. (1) No order made or deemed to be made in exercise of any power conferred by or under any of the provisions continued in force by section 2 shall be called in question in any court..

Savings as to orders.

(2) Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under any of the aforesaid provisions, a court shall, within the meaning of the Indian Evidence Act, 1872, presume that such order was so made by that authority.

I of 1872.

6. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any of the provisions continued in force by section 2 or any order made or deemed to be made thereunder.

Pretention of action taken under rules.

(2) No suit or other legal proceeding shall lie against the Crown for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of any of the provisions continued in force by section 2 or any order made or deemed to be made thereunder.

THE SCHEDULE

(See section 2.)

Provisions of the Defence of India Rules continued in force.

Number and title of Rule	Modification
1.—Short title
2.—Definitions	Clause (1) shall be omitted.
3.—Interpretation	Sub-rule (3) shall be omitted
4.—Saving
5.—Non-compliance with these rules or orders made thereunder.	...
97.—Definition
98.—Prohibition of trading with the enemy
99.—Control of rights, etc., in respect of trading with the enemy.	...
100.—Power to appoint Controllers, etc., of Enemy Trading.	...
110A.—Powers of Controllers, etc., of Enemy Trading.	...
101A.—Penalty for failure to comply with orders of Controllers, etc.	...
103.—Definitions
104.—Prohibition of trade with enemy firms and purchase of enemy currency.	...
105.—Power to appoint Controllers, etc., of enemy firms.	...
106.—Powers of Controllers, etc., of enemy firms.	...
108.—Penalty for failure to comply with orders of Controllers, etc.	...
110.—Contracts with enemy firms.
111.—Transfer of property to or by enemy firms
118A.—Power to carry on business of enemy firms
114.—Collection of debts of enemy firms and custody of property.	...
114A.—Power to control and wind up certain business.	...
117.—False statements
117A.—Power to require production of books, etc.	...
121.—Attempts, etc., to contravene rules
122.—Offences by corporations
123A.—Burden of proof in certain cases
130.—Cognizance of contraventions of the rules, etc.	Sub-rules (3) and (4) shall be omitted.

THE REQUISITIONED LAND (CONTINUANCE OF POWERS) ACT, 1947.

¹Act No. XVII of 1947.

[24th March, 1947.]

An Act to provide for the continuance of certain emergency powers in relation to requisitioned land.

XXXV of 1939.

WHEREAS it is expedient to provide, in relation to land which when the Defence of India Act, 1939, expired, was subject to any requisition effected under rules made under that Act, for the continuance of certain powers theretofore exercisable under the said Act or the said rules:

XIX of 1946.

AND WHEREAS the Requisitioned Land (Continuance of Powers) Ordinance, 1946, provided for the continuance of such powers, as the Indian Legislature was not in session:

9 and 10 Geo. 6, c. 39.

AND WHEREAS the Indian Legislature has been empowered by section 3 of the India (Central Government and Legislature) Act, 1946, to make laws with respect to the matters aforesaid;

It is hereby enacted as follows:—

1. (1) This Act may be called the Requisitioned Land (Continuance of Powers) Act, 1947.

Short title, extent and duration.

(2) It extends to [all the Provinces of India].

9 and 10 Geo. 6, c. 39. X of 1897.

(3) It shall cease to have effect on the expiration of the period mentioned in section 4 of the India (Central Government and Legislature) Act, 1946, except as respects things done or omitted to be done before the expiration thereof, and section 6 of the General Clauses Act, 1897, shall apply upon the expiry of this Act as if it had then been repealed by a Central Act.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(1) “appropriate Government” means, in relation to any requisitioned land, the Central or Provincial Government by which or under the authority of which the land has been requisitioned;

XIX of 1946.

(2) “Ordinance” means the Requisitioned Land (Continuance of Powers) Ordinance, 1946;

(3) “Provincial Government” means, in relation to a Chief Commissioner’s Province, the Chief Commissioner;

XXXV of 1939.

(4) “requisitioned land” means immovable property which at the commencement of this Act is subject to any requisition effected under the rules made under the Defence of India Act, 1939.

¹ For Statement of Objects and Reasons, see Gazette of India, 1946, Pt. V, p. 360.

² Subs. by the A.O. 1948 for “the whole of British India”.

³ Period extended upto 1st April, 1949, see Notification No. 7-WL(1)/47, dated 3rd March 1948, Gazette of India, 1948, Pt. I, p. 310.

Continu-
ance of
requisi-
tions.

3. Notwithstanding the expiration of the Defence of India Act, 1939, and the rules made thereunder and the repeal of the Ordinance, all requisitioned lands shall continue to be subject to requisition until the expiry of this Act and the appropriate Government may use or deal with any requisitioned land in such manner as may appear to it to be expedient: XXXV of 1939.

Provided that the appropriate Government may at any time re-lease from requisition any requisitioned land.

Release
from requi-
sition,

4. (1) Where any requisitioned land is to be released from requisition, the appropriate Government may, after making such inquiry, if any, as it considers necessary, specify by order in writing the person to whom possession of the land shall be given.

(2) The delivery of possession of the requisitioned land to the person specified in an order made under sub-section (1) shall be a full discharge of the Government from all liability in respect of such delivery, but shall not prejudice any rights in respect of the land which any other person may be entitled by due process of law to enforce against the person to whom possession of the land is so delivered.

(3) Where the person to whom possession of any requisitioned land is to be given cannot be found and has no agent or other person empowered to accept delivery on his behalf, the appropriate Government shall cause a notice declaring that the land is released from requisition to be affixed on some conspicuous part of the land and publish the notice in the official Gazette.

(4) When a notice referred to in sub-section (3) is published in the official Gazette, the land specified in such notice shall cease to be subject to requisition on and from the date of such publication and be deemed to have been delivered to the person entitled to possession thereof; and the Government shall not be liable for any compensation or other claim in respect of the land for any period after the said date.

Power to
acquire
requisition-
ed land.

5. (1) Subject to the provisions of sub-section (3), the appropriate Government may, at any time when any requisitioned land continues to be subject to requisition under section 3, acquire such land by publishing in the official Gazette a notice to the effect that such Government has decided to acquire such land in pursuance of this section

(2) When a notice as aforesaid is published in the official Gazette, the requisitioned land, shall on and from the beginning of the day on which the notice is so published, vest absolutely in the appropriate Government free from all encumbrances and the period of requisition of such land shall end.

(3) No requisitioned land shall be acquired under this section except in the following circumstances, namely:—

(a) where any works have during the period of requisition been constructed on, in or over the land wholly or partly at

the expense of Government and the appropriate Government decides that the value of, or the right to use, such works should be preserved or secured for the purposes of Government; or

(b) where the cost of restoring the land to its condition at the time of its requisition would, in the determination of the appropriate Government, be excessive having regard to the value of the land at that time and the owner declines to accept the release from requisition of the land without payment of compensation from Government.

(4) Any decision or determination of the appropriate Government under sub-section (3) shall be final, and shall not be called in question in any Court.

(5) For the purposes of clause (a) of sub-section (3) "works" includes buildings, structures and improvements of every description.

6. (1) In respect of the continued subjection of requisitioned land to requisition under this Act or the Ordinance, compensation shall be determined and paid in accordance with the provisions of section 19 of the Defence of India Act, 1939, and of the rules made thereunder:

Payment
of com-
pensation.

XXXV of
1939.

Provided that all agreements and awards under the said section in respect of the payment of compensation for the period of requisition before the expiry of the said Act shall continue to be in force and shall apply to the payment of compensation for the period of requisition after such expiry.

(2) In respect of any acquisition of requisitioned land under this Act or the Ordinance, the amount of compensation payable shall be such sum as would be sufficient to purchase at the market rate prevailing on the date of the notice under section 5 a piece of land equal in area to, and situated within a distance of three miles from, the acquired land, and suitable for the same use as that to which the acquired land was being put immediately before the date of its requisition, or a sum equivalent to twice the market value of the acquired land on the date of its requisition, whichever is less; and such amount shall be determined and paid in accordance with the procedure set out in the aforesaid section 19 and the rules made thereunder.

(3) For the purposes of sub-section (1) all the provisions of the aforesaid section 19 and of the rules made thereunder, and for the purposes of sub-section (2) such of those provisions as relate to matters of procedure, shall be deemed to be continuing in force.

7. (1) The appropriate Government may, with a view to carrying out the purposes of sections 3 to 6, by order require any person to furnish to such authority as may be specified in the order such information in his possession relating to any requisitioned land as may be specified.

Power to
obtain
informa-
tion.

(2) Every person required to furnish such information as is referred to in sub-section (1) shall be deemed to be legally bound to do so within the meaning of sections 176 and 177 of the Indian Penal Code.

XLV of
1860.

8. The Central Government or any Provincial Government may, by order notified in the official Gazette, direct that any power conferred or any duty imposed on it by this Act shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by such officer as may be so specified.

Delegation of functions.

9. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

Protection of action taken under the Act.

(2) No suit or other legal proceeding shall lie against the Crown for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

10. The Requisitioned Land (Continuance of Powers) Ordinance, 1946, is hereby repealed; and anything done in exercise of any power conferred by or under the said Ordinance shall be deemed to have been done in exercise of powers conferred by or under this Act as if this Act, had commenced on the 1st day of October, 1946.

Repeal of Ord. XIX of 1946.

THE IMPORTS AND EXPORTS (CONTROL) ACT, 1947.

¹Act No. XVIII of 1947.

[24th March, 1947.]

An Act to continue for a limited period powers to prohibit or control imports and exports.

WHEREAS it is expedient to continue for a limited period powers to prohibit, restrict or otherwise control imports ~~into~~ and exports from ^{the} ~~the~~ Provinces];

It is hereby enacted as follows:—

1. (1) This Act may be called the Imports and Exports (Control) Act, 1947.

Short title, extent, commencement and duration.

(2) It extends to ^{whole} ~~all the Provinces~~ of India].

(3) It shall come into force on the 25th day of March, 1947, and shall remain in force ~~for a period of three years only.~~ ^{9th March 1960} ~~until the 31st day of March 1960~~

2. In this Act,—

(a) “Customs-collector” means a Customs-collector as defined in the Sea Customs Act, 1878, or a Collector of Land Customs appointed under the Land Customs Act, 1924;

Interpretation.

(b) “import” and “export” mean respectively bringing into, and taking out of ^{the} ~~the~~ Provinces] by sea, land or air;

¹ For Statement of Objects and Reasons, see Gazette of India, 1947, Pt. V, p.; for Report of Select Committee, see *ibid.* p. 258.

² Subs. by the A.O. 1948 for “British India”.

³ Subs. by the A.O. 1948 for “the whole of British India”.

VIII of
1878
XIX of
1924

- (c) "officer of Customs" means an officer of Customs appointed under the Sea Customs Act, 1878, or a Land Customs Officer appointed under the Land Customs Act, 1924.

3. (1) The Central Government may, by order published in the official Gazette, make provision for prohibiting, restricting or otherwise controlling, in all cases or in specified classes of cases, and subject to such exceptions, if any, as may be made by or under the order,—

Powers to
prohibit
or restrict
imports
and
exports.

(a) the import, export, carriage coastwise or shipment as ships' stores of goods of any specified description;

(b) the bringing into any port or place in ^{India} [the Provinces] of goods of any specified description intended to be taken out of ^{India} [the Provinces] without being removed from the ship or conveyance in which they are being carried.

VIII of
1878.

(2) All goods to which any order under sub-section (1) applies shall be deemed to be goods of which the import or export has been prohibited or restricted under section 19 of the Sea Customs Act, 1878, and all the provisions of that Act shall have effect accordingly, except that section 183 thereof shall have effect as if for the word "shall" therein the word "may" were substituted.

(3) Notwithstanding anything contained in the aforesaid Act, the Central Government may, by order published in the official Gazette, prohibit, restrict or impose conditions on the clearance, whether for home consumption or for shipment abroad, of any goods or class of goods imported into ^{India} [the Provinces].

XX of
1946.

4A. Fees for applications for, and issue or renewal of, licences: The Central Govt. may by order levy, subject to such exceptions, if any, in respect of any person or class of persons as may be specified in the order, any fee in respect of any application or in respect of any licence granted or renewed under any order made or deemed to have been made under this Act.

VI/50.

II/55.

VIII of
1878.

6. No Court shall take cognizance of any offence punishable under section 5 except upon complaint in writing made by a Customs-collector or by an officer of Customs authorised in writing in this behalf by a Customs-collector, and no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any such offence.

Cognizance
of offences.

7. No order made or deemed to have been made under this Act shall be called in question in any Court, and no suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act or any order made or deemed to have been made thereunder.

Savings.

¹ For such an Order, see Gazette of India, 1948, Pt. I, p. 286.

² Subs. by the A.O. 1948 for "British India".

³ For such Orders, see Gazette of India, 1947, Pt. I, p. 836 and *ibid*, 1948, Pt. I, p. 377.

THE DELHI AND AJMER-MERWARA RENT CONTROL ACT, 1947.

¹Act No. XIX of 1947.

[24th March, 1947.]

An Act to provide for the control of rents and evictions, and for the lease to Government of premises upon their becoming vacant, in certain areas in the Provinces of Delhi and Ajmer-Merwara.

WHEREAS it is expedient to provide for the control of rents and evictions, and for the lease to Government of premises upon their becoming vacant, in certain areas in the Provinces of Delhi and Ajmer-Merwara;

It is hereby enacted as follows:—

Short title,
extent,
commence-
ment and
duration.

1. (1) This Act may be called the Delhi and Ajmer-Merwara Rent Control Act, 1947.

(2) It extends to the areas specified in the First Schedule, and such other ²areas in the Province of Delhi or Ajmer-Merwara as the Central Government may from time to time specify by notification in the official Gazette; but it shall not apply—

(a) to any premises ³[situated in the Province of Ajmer-Merwara] the construction of which is not completed and which are not let to a tenant before the commencement of this Act, or

(b) to any premises belonging to the Government, or

(c) to any tenancy or other like relationship created by a grant from the Government in respect of premises taken on lease or requisitioned by the Government.

(3) It shall come into force on the 24th day of March 1947, and shall remain in force for a period of two years:

Provided that the Central Government may, by notification in the official Gazette, direct that it shall remain in force for a further period not exceeding two years:

Provided further that the Central Government may at any time, by notification in the official Gazette, direct that it shall cease to be in force in such areas as may be specified in the notification on such date as may be so specified.

(4) Section 6 of the General Clauses Act, 1897, shall apply upon the expiry of this Act in any area as if it had then been repealed by a Central Act. X of 1897.

¹ For Statement of Objects and Reasons, see Gazette of India, 1947, Pt. V, p. 26; for Report of Select Committee, see *ibid.* p. 243.

² Extended to Notified Area Red Fort and West Notified Area in the Province of Delhi, see Gazette of India, 1947, Pt. I, p. 197.

³ Ins. by s. 2 of the Delhi and Ajmer-Merwara Rent Control (Amendment) Act, 1947 (50 of 1947).

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

- (a) "landlord" includes any person who for the time being is receiving or is entitled to receive the rent of any premises, whether on his own account or as an agent, trustee, guardian or receiver for any other person, or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant;
- (b) "premises" means any building or part of a building which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose, and includes—
 - (i) the garden, grounds and outhouses, if any, appertaining to such building or part of a building, and
 - (ii) any furniture supplied by the landlord for use in such building or part of a building,
 but does not include a room in a dharamshala, hotel or lodging house;
- (c) "standard rent", in relation to any premises, means—
 - (i) standard rent of the premises as determined in accordance with the provisions of the Second Schedule, or
 - (ii) where the standard rent has been fixed by the Court under section 7, the rent as fixed by the Court;¹ or
 - (iii) where the standard rent has been fixed under section 7A, the rent so fixed;]
- (d) "tenant" means a person who takes on rent any premises for his own occupation or for the occupation of any person dependent on him but does not include a collector of rents or any middleman who takes or has taken any premises on lease with a view to sub-letting them to another person.

3. (1) Except where rent is liable to periodical increment by virtue of an agreement entered into before the 1st day of January, 1939, or where rent is payable under a lease entered into before the 1st day of January, 1939, which has not expired before the first day of the period for which the rent is claimed, no tenant shall, notwithstanding anything contained in any contract, be liable to pay to his landlord for occupation of any premises any sum in excess of the standard rent of those premises, unless such sum may lawfully be added to the standard rent in accordance with the provisions of this Act.

Restriction of payments by way of rent.

(2) Any agreement for the payment of rent in excess of the standard rent shall be null and void and shall be construed as if it was an agreement for payment of the standard rent only.

¹ Ins. by s. 3 of the Delhi and Ajmer-Merwara Rent Control (Amendment) Act, 1947 (50 of 1947).

Lawful
increases
of, or addi-
tions to,
standard
rent.

4. (1) Where a part of the premises let for use has been sublet by the tenant then, without prejudice to the provisions of section 9, —

(a) the landlord may increase the rent payable by the tenant—

(i) in the case of premises let for residential purposes by an amount not exceeding 12½ per cent. of the standard rent of the part sublet; and

(ii) in the case of premises let for other purposes by an amount not exceeding 25 per cent. of the standard rent of the part sublet;

(b) the tenant may increase the rent payable by the sub-tenant—

(i) in the case of premises let for residential purposes by an amount not exceeding 25 per cent. of the standard rent of the part sublet; and

(ii) in the case of premises let for other purposes by an amount not exceeding 50 per cent. of the standard rent of the part sublet;

(c) the tenant shall, on being so requested in writing by the landlord, supply him within fourteen days thereafter a statement in writing giving full particulars of any subletting including the rent charged.

Explanation.—For the purposes of this sub-section, the standard rent of the part sublet shall be an amount bearing such proportion to the standard rent of the premises as may be reasonable having regard to the extent of the part sublet and other relevant considerations.

(2) Where the landlord has at any time whether before or after the commencement of this Act, incurred expenditure on any improvement or structural alteration of the premises not being expenditure on decoration or normal repairs, and the cost of that improvement or structural alteration has not been taken into account in determining the standard rent of the premises, he may increase the rent per year by an amount not exceeding six and one-quarter per cent. of such cost.

(3) Where the landlord pays in respect of the premises any charge for electricity or water consumed in the premises, or any other charge levied by a local authority having jurisdiction in the area which is ordinarily payable by the tenant, he may recover from the tenant any amount so paid by him; but no landlord shall recover from his tenant, whether by means of an increase in rent or otherwise, the amount of any tax on buildings or land imposed in respect of the premises occupied by the tenant:

Provided that nothing in this sub-section shall affect the liability of any tenant under an agreement, express or implied, to pay from time to time the amount of any such tax as aforesaid.

5. (1) It shall not be lawful for the landlord or any person acting or purporting to act on behalf of the landlord or the tenant or any person acting or purporting to act on behalf of the tenant, to claim or receive, in consideration of the grant, continuance or renewal of a tenancy or sub-tenancy of any premises payment of any fine, premium, advance or other like sum in addition to rent, or, save as otherwise provided in section 4 or section 7, any rent in excess of the standard rent of the premises.

Unlawful charges by landlord or tenant.

(2) It shall not be lawful for the tenant, or any person acting or purporting to act on behalf of the tenant, or a sub-tenant to claim or receive any payment in consideration of the relinquishment of his tenancy of any premises.

(3) Nothing in this section shall apply to any payment made in pursuance of an agreement entered into before the 1st day of November, 1939.

6. No collector of rents or middleman shall be liable to pay to his principal in respect of any premises any sum by way of rental charges which exceeds the amount which he is entitled under this Act to realise from the tenant or tenants of the premises.

Limitation of liability of middlemen.

7. (1) If any dispute arises regarding the standard rent payable in respect of any premises [other than premises to which the provisions of section 7A apply.] it shall be determined by the Court.

Determination of disputes regarding rent.

(2) Where for any reason it is not possible to determine the standard rent of any premises on the principles set forth in the Second Schedule, the court may, on the application of any person interested or of its own motion, determine the standard rent, and in so doing shall have regard to the standard rents of similar premises in the same locality and other relevant considerations.

(3) Where the standard rent of any premises has been settled on the basis of a lease for a period of one year or more and the court has to determine the standard rent of the same premises, on a lease for a period of less than one year or *vice versa*, the standard rent shall be calculated in accordance with the Third Schedule.

(4) Where the court determines the standard rent of any premises under this section, the court shall determine the standard rent of the premises in an unfurnished state, but may also determine an additional charge to be payable on account of fittings or furnishings included in the lease, and it shall be lawful for the landlord to recover such additional charge from the tenant

(5) In every case in which the court determines the standard rent of any premises under this section it shall appoint a date from which the standard rent so determined shall be deemed to have effect.

¹ Ins. by s. 4 of the Delhi and Ajmer-Merwara Rent Control (Amendment) Act, 1947 (50 of 1947).

Special provisions relating to newly constructed premises in Delhi.

Notice of increase of rent.

Eviction of tenants.

¹[7.A. The provisions set out in the Fourth Schedule shall apply to the fixation of rent and other matters relating to the premises in Delhi (hereinafter referred to as the newly constructed premises) the construction of which was not completed before the commencement of ²[this Act].

8. (1) Where the landlord wishes to increase the rent of any premises he shall give the tenant notice of his intention to make the increase, and, in so far as such increase is permissible under this Act, it shall be due and recoverable only in respect of the period of tenancy after the end of the month in which the notice is given.

(2) Every notice under sub-section (1) shall be in writing signed by or on behalf of the landlord and given in the manner provided in section 106 of the Transfer of Property Act, 1882.

(3) For the avoidance of doubt it is hereby declared that the provisions of this section apply equally to any increase in the rent payable by a sub-tenant.

9. (1) Notwithstanding anything contained in any contract, no court shall pass any decree in favour of a landlord, or make any order, in favour of a landlord whether in execution of a decree or otherwise, evicting any tenant, whether or not the period of the tenancy has terminated, unless it is satisfied either—

(a) that the tenant has neither paid nor tendered the whole of any arrears of rent due, within one month of the service on him in the manner provided in section 106 of the Transfer of Property Act, 1882, of a notice of demand by the landlord:

Provided that no eviction shall be ordered under this clause if the tenant pays in court on the first day of hearing such arrears of rent together with the costs of the suit; or

(b) that the tenant without the consent of the landlord, has, whether before or after the commencement of this Act,—

(i) used the premises for a purpose other than that for which they were let, or

(ii) assigned, sublet, or otherwise parted with the possession of, the whole of the premises, or

(c) that the tenant without the consent of the landlord has, after the commencement of this Act, sublet any part of the premises; or

(d) that the premises were let for use as a residence and neither the tenant nor any member of his family has been residing therein for a period of six months immediately before the date of the institution of the suit for eviction; or

¹ Subs. by s. 5 of the Delhi and Ajmer-Merwara Rent Control (Amendment) Act, 1947 (50 of 1947) for s. 7A which had been inserted by s. 5 of the Delhi and Ajmer-Merwara Rent Control (Amendment) Ordinance, 1947 (18 of 1947).

² Subs. by s. 2 of the Delhi and Ajmer-Merwara Rent Control (Amendment) Act, 1948 (28 of 1948) (with retrospective effect) for "this section".

- (e) that purely residential premises are required *bona fide* by the landlord who is the owner of such premises for occupation as a residence for himself or his family, that he neither has nor is able to secure other suitable accommodation, and that he has acquired his interest in the premises at a date prior to the beginning of the tenancy or the 2nd day of June, 1944, whichever is later or, if the interest has devolved on him by inheritance or succession, his predecessor had acquired the interest at a date prior to the beginning of the tenancy or the 2nd day of June, 1944 whichever is later; or
- (f) that the tenant after the commencement of this Act has built, acquired vacant possession of or been allotted a suitable residence; or
- (g) that the premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after the commencement of this Act, to be in such service or employment; or
- (h) that the tenant has been guilty of conduct which is a nuisance or annoyance to the occupiers of neighbouring premises or other occupiers of the same premises; or
- (i) that the tenant has, whether before or after the commencement of this Act, caused or permitted to be caused substantial damage to the premises, or notwithstanding previous notice has used or dealt with the premises in a manner contrary to any condition imposed by the Government or the Delhi Improvement Trust on the landlord while giving him a lease of the land on which the premises are situated; or
- (j) that the landlord requires the premises in order to carry out any building work—
 - (i) at the instance of the Government or the Delhi Improvement Trust in pursuance of an improvement scheme, or development scheme, or
 - (ii) because the premises have become unsafe or unfit for human habitation:

Provided that no decree for eviction shall be passed on the grounds set forth in clauses (e) and (i) unless the Court is satisfied after taking all the facts and circumstances into consideration that it is reasonable to allow such eviction:

Provided further that where a decree evicting a tenant is made on the grounds set forth in clause (e), the landlord shall not be entitled to obtain possession of the premises by process of the Court issued in execution, before the expiration of a period of three months after the date of the decree.

(2) For the purposes of clause (b) or clause (c) of sub-section (1), a court may presume that premises let for use as a residence were or are sublet by the tenant in whole or in part to another person, if it is satisfied that such person, not being a servant of the tenant or a member of the family of such servant, was or has been residing in the premises or any part thereof for a period exceeding one month otherwise than in commensality with the tenant.

(3) Where a decree or order evicting a tenant is made on the grounds set forth in clause (e) of sub-section (1) and the landlord fails to occupy and use the premises as a residence for himself or his family within two months of obtaining possession thereof, or at any time within one year of obtaining possession of the premises lets the whole or any part thereof to any person other than the evicted tenant, the Court may on the application of the evicted tenant place him in possession of the premises and award such damages as it thinks fit against the landlord.

Special
provision
regarding
vacant
building
sites.

10. (1) The provisions of this section shall apply notwithstanding anything contained in section 9, but only in relation to premises in such areas as the Central Government may from time to time specify by notification in the Official Gazette.

(2) Where any premises which have been let comprise vacant grounds upon which it is permissible under the building regulations or other municipal bye-laws for the time being in force to erect another building, whether for use as a residence or for any other purpose and the landlord proposing to erect such building is unable to obtain possession of those grounds from the tenant by agreement with him, the landlord may apply to the Court, and the Court may, if it is satisfied that the landlord is ready and willing to commence the work and that the severance of the vacant grounds from the rest of the premises will not cause undue hardship to the tenant,—

- (a) direct such severance,
- (b) place the landlord in possession of the vacant grounds,
- (c) determine the rent payable by the tenant thereafter in respect of the rest of the premises, and
- (d) make such other orders as it thinks fit in the circumstances of the case.

Lease to
Govern-
ment of
premises
becoming
vacant.

11. (1) The provisions of this section shall apply only in relation to premises within the Municipality of New Delhi which are, or are intended to be, let for use as a residence.

(2) Whenever any premises the standard rent of which is not less than two thousand and four hundred rupees per year becomes vacant, either by the landlord ceasing to occupy the premises or by the termination of a tenancy or by the eviction of a tenant or by the release of the premises from requisition or otherwise,—

¹ For such notifications see Gazette of India, 1947, Pt. I, p. 1250 and *ibid*, 1948, Pt. I, p. 123.

(a) the landlord shall, within seven days of the premises becoming vacant, give intimation thereof in writing to the Estate Officer to the Government of India;

(b) whether or not such intimation is given, the Estate Officer may serve on the landlord by post or otherwise a notice—

(i) informing him that the premises are required by the Government for the duration of this Act or for such shorter period as may be specified in the notice, and

(ii) requiring him, and every person claiming under him, to deliver possession of the premises forthwith to such officer or person as may be specified in the notice:

Provided that where the landlord has given the intimation required by clause (a) no notice shall be issued by the Estate Officer under clause (b) more than seven days after the delivery to him of the intimation:

Provided, further that nothing in this sub-section shall apply in respect of any premises the possession of which has been obtained by the landlord on the basis of a decree or order made on the grounds set forth in clause (e) of sub-section (1) of section 9 or in respect of any premises which have been released from requisition for the occupation and use of the landlord himself.

(3) Upon the service of a notice under clause (b) of sub-section (2) the premises shall be deemed to have been leased to the Government for the period specified in the notice, as from the date of the delivery of the intimation under clause (a) of sub-section (2) or in a case where no such intimation has been given, as from the date on which possession of the premises is delivered in pursuance of the notice, and the other terms of the lease shall be such as may be agreed upon between the Government and the landlord or in default of agreement as may be determined by the court, in accordance with the provisions of this Act.

(4) In every case where the landlord has in accordance with the provisions of sub-section (2) given intimation of any premises becoming vacant and the premises are not taken on lease by the Government under this section, the Government shall pay to the landlord a sum equal to one-fiftysecond of the standard rent per year of the premises.

(5) Any premises taken on lease by the Government under this section may be put to any such use as the Government thinks fit, and in particular the Government may permit the use of the premises for the purposes of any public institution or any foreign embassy, legation or consulate or any High Commissioner or Trade Commissioner, or as a residence by any officer in the service of the Government or of a foreign embassy, legation or consulate or of a High Commissioner or Trade Commissioner.

Landlord's
duty to
keep
premises
in good
repair.

12. (1) The landlord shall be bound to keep in good and tenantable repair any premises to which this Act applies except in cases where the tenant has undertaken by agreement to keep the premises in repair.

(2) If the landlord neglects to make, within a reasonable time after notice, any repairs which he is bound to make under sub-section (1), the tenant may make the same himself, and deduct the expenses of such repairs from the rent, or otherwise recover it from the landlord:

Provided that the amount so deducted or recoverable in any year shall not exceed one twelfth of the rent payable by the tenant for that year.

Penalties.

13. (1) If any person fails to comply with the provisions of clause (c) of sub-section (1) of section 4, or supplies under that clause a statement which is false in any material particular, he shall be punishable with fine which may extend to one thousand rupees.

(2) If any person receives any payment prohibited by sub-section (1) or sub-section (2) of section 5, he shall be punished with fine which shall not be less than the amount so received by him but shall not exceed that amount by more than one thousand rupees, and shall also be punishable with simple imprisonment for a term which may extend to three months.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, any Magistrate of the first class may pass a sentence of fine exceeding one thousand rupees on a person convicted of an offence punishable under sub-section (2) of this section.

(4) No court shall try any person for an offence punishable under sub-section (2) of this section after the expiry of three months from the date of the commission of the offence unless complaint in respect of the offence has been made to a Magistrate within those three months.

(5) If any person contravenes the provisions of clause (a) of sub-section (2) of section 11, or fails to comply with a requirement under clause (b) thereof, he shall be punishable with fine which may extend to one thousand rupees.

Jurisdic-
tion of
courts.

14. (1) Except as may be otherwise provided by rules made under sub-section (2), any question which under this Act is to be determined by the court may be determined by any court which would have jurisdiction to hear and decide a suit for eviction of a tenant from the premises in respect of which the question arises.

(2) With the concurrence of the Chief Commissioner, the High Court may make rules to determine the classes of courts which shall have power to hear and decide original cases, appeals and applications for revision and to deal with execution proceedings under this Act and the procedure to be followed by them.

(3) The power conferred by sub-section (2) shall include power to determine in what circumstances the parties shall have a right to appeal or apply for review or revision in cases under this Act, and further to determine how and by what authority it shall be decided whether any particular case shall be deemed to be a case under this Act.

(4) All rules made under sub-section (2) shall be published in the Official Gazette.

V of 1908. (5) The provisions of this Act and of any rules made under sub-section (2) shall, in respect of any case under this Act, have effect notwithstanding anything to the contrary in the Code of Civil Procedure, 1908, or any other law.

XXV of 1944.

15. (1) The Delhi Rent Control Ordinance, 1944, the New Delhi House Rent Control Order, 1939, and the Ajmer-Merwara Control of Rent and Eviction Order, 1946 are hereby repealed; but the repeal shall not affect—

Repeals and savings.

(a) the previous operation of, or anything duly done or suffered to be done under, the said Ordinance or Orders; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the said Ordinance or Orders; or

(c) any penalty, forfeiture or punishment incurred in respect of any contravention of the said Ordinance or Orders; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

Punjab Act, X of 1941.

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if the said Ordinance and Orders had not been repealed, and had been duly made and continued in force.

(2) The Punjab Urban Rent Restriction Act, 1941, shall cease to have effect in the Province of Delhi.

THE FIRST SCHEDULE.

[See section 1 (2)].

AREAS TO WHICH THE ACT EXTENDS.

A. *The Province of Delhi—*

1. The Municipality of Delhi;
2. The Municipality of New Delhi;
3. The Cantonment of Delhi;
4. The Notified Area of the Civil Station, Delhi;
5. The Municipality of Shahdara.

B. *The Province of Ajmer-Merwara—*

1. The Municipality of Ajmer and all land within one mile of the limits of that Municipality;
2. The Municipality of Beawar and all land within one mile of the limits of that Municipality;
3. The Cantonment of Nasirabad and all land within one mile of the limits of that Cantonment.

THE SECOND SCHEDULE.

[See section 2 (c)].

PART A.

PROVISIONS FOR DETERMINING THE STANDARD RENT OF PREMISES
IN THE PROVINCE OF DELHI.

1. In this Part of this Schedule, "basic rent" in relation to any premises means—

(a) where the fair rent of the premises has been determined or re-determined under the provisions of the New Delhi House Rent Control Order, 1939, the rent as so determined, or as the case may be, re-determined;

(b) where the standard rent of the premises has been fixed by the Court under section 7 of the Delhi Rent Control Ordinance, 1944, the rent as so fixed, XXV of
1944.

(c) in any other case,—

(i) the rent at which the premises were let on the 1st day of November, 1939, or

(ii) if the premises were not let on that date, the rent at which they were first let after that date.

2. Where the premises in respect of which rent is payable were let, for whatever purpose, after the 2nd day of June, 1944, the standard rent of the premises shall be the same as the basic rent thereof.

3. Where the premises in respect of which rent is payable, not being premises to which paragraph 2 applies, are let for the purpose of being used as a residence or for any of the purposes of a public hospital, an educational institution, a public library or reading-room or an orphanage, the standard rent of the premises shall be the basic rent increased by—

(a) 12½% thereof, if the basic rent per annum is not more than Rs. 300,

(b) 15-5/8% thereof, if the basic rent per annum is more than Rs. 300, but not more than Rs. 600,

(c) 18-3/4% thereof, if the basic rent per annum is more than Rs. 600, but not more than Rs. 1,200, or

(d) 25% thereof, if the basic rent per annum is more than Rs. 1,200.

4. Where the premises in respect of which rent is payable, not being premises to which paragraph 2 applies, are let for any purpose other than those mentioned in paragraph 3, the standard rent of the premises shall be the basic rent increased by twice the amount by which it would be increased under paragraph 3 if the premises were let for a purpose mentioned in that paragraph.

5. Where the premises in respect of which rent is payable, not being premises to which paragraph 2 applies, are used mainly as residence and incidentally for business or profession, the standard rent of the premises shall be the mean of the rent as calculated under paragraphs 3 and 4.

PART B.

PROVISIONS FOR DETERMINING THE STANDARD RENT OF PREMISES
IN THE PROVINCE OF AJMER-MERWARA.

1. In this Part of this Schedule, "basic rent" in relation to any premises means—

- (a) where the fair rent of the premises has been determined or re-determined under the provisions of the Ajmer House Rent Control Order, 1943, the rent as so determined, or, as the case may be, re-determined;
- (b) in any other case,—
 - (i) the rent at which the premises were let on the 1st day of September, 1939, or
 - (ii) if the premises were not let on that date, the rent at which they were first let after that date.

2. Where the premises in respect of which rent is payable were let, for whatever purpose, after the 2nd day of June, 1944, the standard rent of the premises shall be the same as the basic rent thereof.

3. Where the premises in respect of which rent is payable are let for use as a residence, the standard rent of the premises shall be the basic rent increased by—

- (a) $8\frac{1}{3}\%$ thereof, if the basic rent per annum is not more than Rs. 300,
- (b) $12\frac{1}{2}\%$ thereof, if the basic rent per annum is more than Rs. 300 but not more than Rs. 600,
- (c) $18\frac{3}{4}\%$ thereof, if the basic rent per annum is more than Rs. 600, but not more than Rs. 1,200, or
- (d) 25% thereof, if the basic rent per annum is more than Rs. 1,200.

4. Where the premises in respect of which rent is payable are let for any purpose other than use as a residence, the standard rent of the premises shall be the basic rent increased by—

- (a) 25% thereof, if the basic rent per annum is not more than Rs. 600.
- (b) $37\frac{1}{2}\%$ thereof, if the basic rent per annum is more than Rs. 600, but not more than Rs. 1,200, or
- (c) 50% thereof, if the basic rent per annum is more than Rs. 1,200.

5. Where the premises in respect of which rent is payable, not being premises to which paragraph 2 applies, are used mainly as residence and incidentally for business or profession, the standard rent of the premises shall be the mean of the rent as calculated under paragraphs 3 and 4.

THE THIRD SCHEDULE.

[See section 7 (3)].

METHOD OF CALCULATING STANDARD RENTS IN THE CASES REFERRED
TO IN SUB-SECTION (3) OF SECTION 7.

If the standard rent of premises for a tenancy of twelve months or more is R, the standard rent for any of the shorter period specified in column 1 shall be as set forth in column 2 of the following table, and *vice versa*, namely:—

Period of Tenancy	Standard Rent
More than 11 months, but not more than 12 months	R 1188
More than 10 months, but not more than 11 months	R X 1200 1160
More than 9 months, but not more than 10 months	R X 1200 1116
More than 8 months, but not more than 9 months	R X 1200 1040
More than 7 months, but not more than 8 months	R X 1200 980
More than 6 months, but not more than 7 months	R X 1200 900
More than 5 months, but not more than 6 months	R X 1200 800
More than 4 months, but not more than 5 months	R X 1200 680
More than 3 months, but not more than 4 months	R X 1200 540
More than 2 months, but not more than 3 months	R X 1200 380
More than 1 month, but not more than 2 months	R X 1200 190
Not more than 1 month	R X 1200

THE FOURTH SCHEDULE.

(See section 7A.)

Provisions relating to the fixation of rent and other matters in respect of newly constructed premises in Delhi.

1. "Rent Controller" for the purposes of this Schedule means the person appointed by the Central Government as the Rent Controller.

2. If the Rent Controller on a written complaint or otherwise has reason to believe that the rent of any newly constructed premises is excessive, he may, after making such inquiry as he thinks fit, proceed to fix the standard rent thereof.

¹ Ins. by s. 6 of the Delhi and Ajmer-Merwara Rent Control (Amendment) Act, 1947 (50 of 1947).

3. The Rent Controller in fixing the standard rent shall state in writing his reasons therefor.

4. In fixing the standard rent the Rent Controller shall take into consideration all the circumstances of the case including any amount paid or to be paid by the tenant by way of premium or any other like sum in addition to rent.

5. No tenant holding any newly constructed premises under an existing lease or on terms otherwise agreed to between the tenant and the landlord shall be required as a result of fixation of the standard rent to pay a rate of rent higher than that fixed in the lease or otherwise agreed to during the currency of an existing lease or an extension thereof, unless the tenant has agreed to some addition, improvement or alteration being carried out in such premises on the understanding that he would pay higher rent and such higher rent is previously or at any subsequent time approved by the Rent Controller.

6. If at any time after the standard rent of any newly constructed premises has been determined under paragraph 2, it appears to the Rent Controller that subsequent to such determination some addition, improvement or alteration, not included in necessary repairs or repairs usually made to premises in that locality has been made to such premises at the landlord's expense, the Rent Controller may, after making such inquiry as he thinks fit, redetermine the standard rent thereof:

Provided that any increase in the standard rent allowed under this paragraph shall not exceed $7\frac{1}{2}$ per cent. of the cost of the addition, improvement or alteration and shall not be chargeable with effect from any date earlier than the date on which the addition, improvement or alteration was completed.

7. For the purposes of an inquiry under paragraphs 2, 5 and 6, the Rent Controller may—

- (a) require the landlord to produce any book of account, document or other information relating to the newly constructed premises,
- (b) enter and inspect such premises after due notice, and
- (c) authorise any officer subordinate to him to enter and inspect such premises after due notice.

8. The standard rent shall in all cases be fixed by the Rent Controller as for a tenancy of twelve months:

Provided that where any newly constructed premises, the standard rent of which is fixed under this paragraph, is let or re-let for a period of less than twelve months, the standard rent for such tenancy shall bear the same proportion to the annual standard rent as the period of tenancy bears to twelve months:

Provided further that where such premises were so let or re-let by reason of the tenant being unwilling to take the same for twelve months, the standard rent for such tenancy shall be determined in accordance with the principles laid down in the Third Schedule.

9. If any dispute arises between a landlord and a tenant over the application of paragraph 8, the matter may be referred by either party to the Rent Controller for decision who shall state in writing his reasons therefor.

10. When the standard rent of any newly constructed premises has been determined—

- (a) the landlord, or any person acting or purporting to act on behalf of the landlord, shall not claim or receive in consideration of the grant, renewal or continuance of a tenancy of such premises any premium, advance or other like sum in addition to rent or any rent in excess of the standard rent;
- (b) any agreement for the payment of rent in excess of the standard rent shall be null and void in respect of such excess only;
- (c) any agreement for the payment of any premium, advance or any like sum in addition to rent shall be null and void;
- (d) any sum in excess of the standard rent and any premium, advance or any like sum in addition to the rent paid, whether before or after the [coming into force of this Act] in respect of such premises shall be refunded to the person by whom it was paid or at the option of such person otherwise adjusted.

11. Any person aggrieved by an order of the Rent Controller may, within thirty days from the date on which the order is communicated to him, appeal to the District Judge, Delhi.]

THE INDIAN FINANCE ACT, 1947.

²ACT No. XX of 1947.

[31st March, 1947.]

An Act to give effect to the financial proposals of the Central Government for the year beginning on the 1st day of April 1947.

WHEREAS it is expedient ^{salt} to discontinue the duty on salt manufactured in, or imported into, ³[the Provinces], to fix maximum rates of postage under the Indian Post Office Act, 1898, to continue, subject to certain modifications, for a further period of one year the additional duties of customs imposed by section 6 of the Indian Finance Act, 1942, to continue the temporary export duty on raw cotton and the enhanced rates of export duties on raw jute and jute manufactures, to enhance the export duty on tea, to fix rates of income-tax and super-tax, and to make certain provisions relating to income-tax, super-tax and excess profits tax;

VI of 1898.

XII of 1942.

¹ Subs. by s. 3 of the Delhi and Ajmer-Merwara Rent Control (Amendment) Act, 1948 (28 of 1948) (with retrospective effect) for "coming into operation of this paragraph".

² For Statement of Objects and Reasons, see Gazette of India, 1947, Pt. V, p. 189.

³ Subs. by the A.O. 1948 for "British India".

It is hereby enacted as follows:—

- (1) This Act may be called the Indian Finance Act, 1947. Short title and extent.
- (2) It extends to ^{the whole} ~~all the~~ Provinces of India, ^{except the territories which immediately before the 1st Nov. 56 were comprised in} ~~the territories to which this Act extends~~ ^{Part B States}. Discontinuance of salt duty.
2. For the year beginning on the 1st day of April 1947, no duty shall be levied on salt manufactured in, or imported by sea or by land into, ~~the Provinces~~. Inland postage rates.
3. For the year beginning on the 1st day of April 1947, the Schedule contained in the First Schedule to the Indian Finance Act, 1945, shall again be inserted in the Indian Post Office Act, 1898, as the First Schedule to that Act. Continuation of additional duties of customs imposed by section 6, Act XII of 1942.
4. The additional duties of customs on certain goods chargeable with a duty of customs under the First Schedule to the Indian Tariff Act, 1934, or under the said Schedule read with any notification of the Central Government for the time being in force, imposed up to the 31st day of March 1943 by section 6 of the Indian Finance Act, 1942, and continued, subject to certain modifications, up to the 31st day of March 1947, by section 5 of the Indian Finance Act, 1946, shall continue to be levied and collected, as provided in the said section 6 and subject to the aforesaid modifications, up to the 31st day of March 1948. Provision regarding certain temporary duties of customs and enhanced rates of duties of customs.
5. (1) For the Second Schedule to the Indian Tariff Act, 1934, the following shall be substituted, namely:—

“THE SECOND SCHEDULE.

Export Tariff.

Item No.	Name of article.	Rate of duty.
1.	RAW JUTE (other than Bimlipatam jute)—	
	(1) Cuttings	Rs. 4-8 per bale of 400 lbs.
	(2) All other descriptions	Rs. 15 per bale of 400 lbs.
2.	JUTE MANUFACTURES (other than of Bimlipatam jute), when not in actual use as coverings, receptacles or bindings for other goods—	
	(1) Sacking (cloth, bags, twist, yarn, rope and twine)	Rs. 50 per ton.
	(2) Hessians and all other descriptions of jute manufactures not otherwise specified	Rs. 80 per ton.
3.	RAW COTTON	At such rate not exceeding Rs. 75 per bale of 400 lbs. as the Central Government by notification in the official Gazette may from time to time determine.
4.	RICE, with or without husk, including rice, flour but excluding rice bran and rice dust, which are free	Two annas and three pies per standard maund.
5.	TEA	Four annas per lb.”

¹ Subs. by the A.O. 1948 for “the whole of British India”.

² Subs. by the A.O. 1948 for “British India”.

(2) The following Ordinances are hereby repealed, namely:—

- | | |
|---|----------------|
| (a) The Indian Tariff Act (Amendment) Ordinance, 1946; | XXVI of 1946. |
| (b) The Indian Tariff Act (Second Amendment) Ordinance, 1946; | XXVII of 1946. |
| (c) The Indian Tariff (Amendment) Ordinance, 1947. | II of 1947. |

Income-tax
and super-
tax.

6. (1) Subject to the provisions of sub-sections (3), (4), (5) and (6), for the year beginning on the 1st day of April 1947—

- (a) income-tax shall be charged at the rates specified in Part I of the Schedule, and
- (b) rates of super-tax shall, for the purposes of section 55 of the Indian Income-tax Act, 1922, be those specified in Part II of the Schedule. XI of 1922.

(2) In making any assessment for the year ending on the 31st day of March 1948, there shall be deducted from the total income of an assessee, in accordance with the provisions of section 15A of the Indian Income-tax Act, 1922, an amount equal to one-fifth of the earned income, if any, included in his total income, but not exceeding in any case four thousand rupees.

(3) In making any assessment for the year ending on the 31st day of March 1948,—

- (a) where the total income of an assessee, not being a company, includes any income chargeable under the head “Salaries” as reduced by the deduction for earned income appropriate thereto, or any income chargeable under the head “Interest on securities”, or any income from dividends in respect of which he is deemed under section 49B of the Indian Income-tax Act, 1922, to have paid income-tax imposed in ¹[the Provinces], the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1946, on his total income the same proportion as the amount of such inclusions bears to his total income; VII of 1946.
- (b) where the total income of an assessee, not being a company, includes any income chargeable under the head “Salaries” on which super-tax has been or might have been deducted under the provisions of sub-section (2) of section 18 of the Indian Income-tax Act, 1922, the super-tax payable by the assessee on that portion of his total income which consists of such inclusion shall be an amount bearing to the total amount of super-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1946, on his total income the same proportion as the amount of such inclusion bears to his total income.

¹ Subs. by the A.O. 1948 for “British India”.

(4) In making any assessment for the year ending on the 31st day of March 1948, where the total income of an assessee consists partly of earned income and partly of unearned income, the super-tax payable by him shall be—

- (i) on that part of the earned income chargeable under the head "Salaries" to which clause (b) of sub-section (3) applies, the amount of super-tax computed in accordance with the provisions of that sub-section, *plus*
- (ii) on the remainder of the earned income, the amount which bears to the total amount of super-tax which would have been payable on his total income had it consisted wholly of earned income the same proportion as such remainder bears to his total income, *plus*
- (iii) on the unearned income, the amount which bears to the total amount of super-tax which would have been payable on his total income had it consisted wholly of unearned income the same proportion as the unearned income bears to his total income.

(5) In making any assessment for the year ending on the 31st day of March 1948,—

- (a) where the total income of a company includes any profits and gains from life insurance business, the super-tax payable by the company shall be reduced by an amount computed at the rate of two annas in the rupee on that part of its total income which consists of such inclusion;
- (b) where the total income of an assessee, not being a company, includes any profits and gains from life insurance business, the income-tax and super-tax payable by the assessee on that part of his total income which consists of such inclusion shall be an amount bearing to the total amount of such taxes payable according to the rates applicable under the operation of the Indian Finance Act, 1942, on his total income the same proportion as the amount of such inclusion bears to his total income, so however that the aggregate of the taxes so computed in respect of such inclusion shall not in any case exceed the amount of tax payable on such inclusion at the rate of five annas in the rupee.

XII of
1942.

(6) In cases to which section 17 of the Indian Income-tax Act, 1922, applies, the tax chargeable shall be determined as provided in that section but with reference to the rates imposed by sub-section (1), and in accordance, where applicable, with the provisions of sub-sections (3), (4) and (5) of this section.

(7) For the purposes of making any deduction of income-tax in the year beginning on the 1st day of April 1947, under sub-section (2) or sub-section (2B) of section 18 of the Indian Income-tax Act, 1922, from any earned income chargeable under the head "Salaries", the estimated total income of the assessee under this head shall, in computing the

income-tax to be deducted, be reduced by an amount equal to one-fifth of such earned income, but not exceeding in any case four thousand rupees.

(8) For the purposes of this section and of the rates of tax imposed thereby, the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian-Income-tax Act, 1922, and the expression "earned income" has the meaning assigned to it in clause (6A) of section 2 of that Act.

Amend-
ment of
section 10,
Act XII
of 1942.

7. To sub-section (2) of section 10 of the Indian Finance Act, 1942, the following proviso shall be added, namely:—

"Provided that if it is subsequently found that the sum so repaid was excessive, the excess repayment shall be recoverable, and the provisions of law referred to in sub-section (4) of section 2 of the Excess Profits Tax Ordinance, 1943, shall apply to the payment and recovery of the amount of the excess repayment as if that amount were a deposit required to be made under that section, but notwithstanding the provisions of sub-section (i) of section 46 of the Indian Income-tax Act, 1922, as applied by the said sub-section (4), such recovery may be made at any time".

XVI of
1943.

XI of 1922.

THE SCHEDULE.

(See section 6)

PART I

Rates of Income-tax.

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons not being a case to which paragraph B of this Part applies—

	Rate.
1. On the first Rs. 1,500 of total income . . .	Nil.
2. On the next Rs. 3,500 of total income . . .	One anna in the rupee.
3. On the next Rs. 5,000 of total income . . .	Two annas in the rupee.
4. On the next Rs. 5,000 of total income . . .	Three and a half annas in the rupee.
5. On the balance of total income . . .	Five annas in the rupee.

Provided that—

(i) no income-tax shall be payable on a total income which, before deduction of the allowance, if any, for earned income, does not exceed Rs. 2,500;

(ii) the income-tax payable shall in no case exceed half the amount by which the total income (before deduction of the said allowance, if any, for earned income) exceeds Rs. 2,500;

(iii) the income-tax payable on the total income as reduced by the allowance for earned income shall not exceed either—

(a) a sum bearing to half the amount by which the total income (before deduction of the allowance for earned income) exceeds Rs. 2,500 the same proportion as such reduced total income bears to the unreduced total income, or

(b) the income-tax payable on the income so reduced at the rates herein specified,—

whichever is less.

B.—In the case of every company and local authority, and in every case in which under the provisions of the Indian Income-tax Act, 1922, income-tax is to be charged at the maximum rate—

XI of
1922.

Rate

On the whole of total income Five annas in the rupee.

PART II

Rates of Super-tax.

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which any other paragraph of this Part applies—

	Rate, if income wholly earned.	Rate, if income wholly unearned.
1. On the first Rs. 25,000 of total income.	<i>Nil.</i>	<i>Nil.</i>
2. On the next Rs. 5,000 of total income.	Two annas in the rupee.	Three annas in the rupee.
3. On the next Rs. 5,000 of total income.	Two and a half annas in the rupee.	Three and a half annas in the rupee.
4. On the next Rs. 10,000 of total income.	Three annas in the rupee.	Four annas in the rupee.
5. On the next Rs. 10,000 of total income.	Four annas in the rupee.	Five annas in the rupee.
6. On the next Rs. 10,000 of total income.	Five annas in the rupee.	Six annas in the rupee.
7. On the next Rs. 10,000 of total income.	Six annas in the rupee.	Seven annas in the rupee.
8. On the next Rs. 15,000 of total income.	Seven annas in the rupee.	Eight annas in the rupee.
9. On the next Rs. 15,000 of total income.	Eight annas in the rupee.	Nine annas in the rupee.
10. On the next Rs. 15,000 of total income.	Nine annas in the rupee.	Ten annas in the rupee.
11. On the next Rs. 30,000 of total income.	Ten annas in the rupee.	Ten and a half annas in the rupee.
12. On the balance of total income.	Ten and a half annas in the rupee.	Ten and a half annas in the rupee.

B.—In the case of every local authority—

Rate

On the whole of total income Two annas in the rupee.

C.—In the case of an association of persons being a co-operative society, other than the Sanikatta Saltowners' Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1912, or under an Act of a Provincial Legislature governing the registration of Co-operative societies— II of 1912.

Rate

- (1) On the first Rs. 25,000 of total income Nil.
- (2) On the balance of total income Two annas in the rupee.

D.—In the case of every company—

Rate

On the whole of total income Two annas in the rupee.

and in addition, in respect of that part of the total income (as reduced by the amount of dividends payable at a fixed rate) which does not exceed the amount of dividends, not being dividends payable at a fixed rate, declared in ~~the Provinces~~ ^{the Provinces} in respect of the whole or part of the previous year for the assessment for the year ending on the 31st day of March, 1948, on the amount by which such part—

Legislation which this extends

A.O. 3/66

Rate

- (a) exceeds 30 per cent., but does not exceed 40 per cent., of the total income as so reduced Three annas in the rupee.
- (b) exceeds 40 per cent., but does not exceed 50 per cent., of the total income as so reduced Five annas in the rupee.
- (c) exceeds 50 per cent., of the total income as so reduced Seven annas in the rupee.

Provided that—

- (i) no additional super-tax shall be payable where such part is less than, or equal to, five per cent. on the capital of the company;
- (ii) where such part is more than five per cent. on the capital of the company, the additional super-tax payable shall be reduced by the amount of additional super-tax which would, but for the provisions of clause (i) of this proviso, have been payable had such part been equal to five per cent. on the capital of the company;
- (iii) the additional super-tax shall be payable only by a company in which the public are substantially interested within the meaning of the *Explanation* to sub-section (1) of section 23A of the Indian Income-tax Act, 1922, or a subsidiary company of such a company where the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof.

XI of 192

Explanation.—For the purposes of this paragraph,—

- (a) the expression “capital of the company” shall be deemed to mean the paid-up share capital at the beginning of the previous year for the assessment for the year ending on the 31st day of March 1948 (other than capital entitled to a dividend at a fixed rate) plus any reserves other than depreciation reserves and reserves for bad or doubtful debts at the same date as diminished by the amount on deposit on the same date with the Central Government under section 10 of the Indian Finance Act, 1942, or section 2 of the Excess Profits Tax Ordinance, 1943:
- (b) the expression “dividend” shall be deemed to include any distribution included in that expression as defined in clause (64) of section 2 of the Indian Income-tax Act, 1922, and any such distribution made during the year ending on the 31st day of March 1948 shall be deemed to have been made in respect of the whole or part of the previous year;
- (c) where any portion of the profits and gains of a company is not included in its total income by reason of such portion being exempt from tax under any provision of the Indian Income-tax Act, 1922, the capital of the company, the total amount of dividends and the amount of dividends payable at a fixed rate shall each be deemed to be the proportion thereof that the total income of the company bears to its total profits and gains.

XII of 1942,
XVI of
1943.

THE BUSINESS PROFITS TAX ACT, 1947.

CONTENTS.

SECTIONS.

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19. Application of provisions of Act XI of 1922.
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SCHEDULE I.—Rules for the computation of profits for purposes of Business Profits Tax.

SCHEDULE II.—Rules for computing the capital of a company for purposes of Business Profits Tax.

¹Act No. XXI of 1947.

An Act to impose a special tax on a certain class of income.

[11th April, 1947.]

WHEREAS it is expedient to impose a special tax on income arising from business;

It is hereby enacted as follows:—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Business Profits Tax Act, 1947.
- (2) It extends to the whole of ~~British~~ India, ^{except the territories immediately before the 1st Nov. 1956, were comprised in Part B States}
- (3) It shall come into force on such ^{date} as the Central Government may, by notification in the official Gazette, appoint.

Interpreta-
tion.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “abatement” means, in respect of any chargeable accounting period, ²[ending on or before the 31st day of March, 1947] a sum which bears to a sum equal to—

- (a) in the case of a company, not being a company deemed for the purposes of section 9 to be a firm, six per cent. of the

¹ For Statement of Objects and Reasons, see Gazette of India, 1947, Pt. V, p. 211; for Report of Select Committee, see *ibid.*, p. 279.

² The 12th April, 1947, see Gazette of India, 1947, Pt. I, p. 587.

³ Ins. by s. 10 of the Indian Finance Act, 1948 (30 of 1948).

capital of the company on the first day of the said period computed in accordance with Schedule II, or one lakh of rupees, whichever is greater, or

(b) in the case of a firm having—

- (i) not more than two working partners, one lakh of rupees, or
- (ii) three working partners, one and a half lakhs of rupees, or
- (iii) four or more working partners, two lakhs of rupees, or

(c) in the case of a Hindu undivided family, two lakhs of rupees, or

(d) in any other case, one lakh of rupees,—the same proportion as the said period bears to the period of one year ⁴and, in respect of any chargeable accounting period beginning after the 31st day of March, 1947, such sum as may be fixed by the annual Finance Act];

XI of
1922.

(2) “accounting period” in relation to any business means any period which is or has been determined as the previous year for that business for the purposes of the Indian Income-tax Act, 1922;

~~²[(21) “British India” means, as respects any period before the 15th day of August, 1947, the territories then referred to as British India, and as respects any period after the 15th day of August, 1947, the territories for the time being comprised in the Provinces of India;]~~

XI of
1922.

(3) “business” includes any trade, commerce or manufacture, or any adventure in the nature of trade, commerce or manufacture, or any profession or vocation the profits of which are chargeable according to the provisions of section 10 of the Indian Income-tax Act, 1922:

Provided that where the functions of a company or of a society incorporated by or under any enactment consist wholly or mainly in the holding of investments or other property, the holding of the investments or property shall be deemed for the purpose of this definition to be a business carried on by such company or society:

Provided further that all businesses to which this Act applies carried on by the same person shall be treated as one business for the purposes of this Act;

(4) “chargeable accounting period” means—

(a) any accounting period falling wholly within the term beginning on the first day of April, 1946, and ending on the thirty-first day of March, ³[1948];

(b) where any accounting period falls partly within and partly without the said term, such part of that accounting period as falls within the said term:

¹ Ins. by s. 10 of the Indian Finance Act, 1948 (20 of 1948).

² Ins. by the Sch. of the India (Adaptation of Income-tax, Profits-tax and Revenue Recovery Acts) Order, 1947 (G.G.O. 31, dated 10th December, 1947) (with effect from 15th August, 1947), see Gazette of India, 1947, Extraordinary, p. 1331.

³ Subs. by s. 10 of Act 20 of 1948, for “1947”.

¹[Provided that where an accounting period falls partly before, and partly after, the end of March, 1947, so much of that accounting period as falls before, and so much of that accounting period as falls after, the end of March, 1947, shall be deemed each to be a separate chargeable accounting period];

(5) "Company" means a company as defined in the Indian Companies Act, 1913^{VII of 1913,} or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession or of a law of an Indian State, and includes any foreign association, whether incorporated or not, which the Central Board of Revenue may, by general or special order, declare to be a company for the purposes of this Act;

A.C. 3/56

(6) "control of a company" means control direct or indirect of more than one half of the voting power attached to the total issued paid-up share capital of the company, or control vested by its Memorandum and Articles of Association otherwise than by reference to such voting power:

Provided that the voting power attached to shares held by a nominee or trustee for any person shall be deemed for the purpose of this definition to be held by that person;

(7) "deficiency of profits" means—

(i) where profits have been made in any chargeable accounting period, the amount by which such profits fall short of the abatement in respect of that period;

(ii) where a loss has been made in any chargeable accounting period, the amount of the loss added to the abatement in respect of that period;

(8) "director" includes any person occupying the position of a director by whatever name called and also includes any person who—

(i) is a manager of the company or concerned in the management of the business, and

(8A) "director's remuneration" includes a remuneration payable by a company to a director thereof in respect of any services rendered by him in connection with the company in any capacity ever;"

¹⁰ XI of 1922,

XLVIII/48

~~(10) "firm", "partner" and "partnership" have the same meanings respectively as in the Indian Partnership Act, 1932;~~

IX of 1932.

(11) "fixed rate" in relation to dividends on share capital, other than ordinary share capital, includes a rate fluctuating in accordance with the maximum rate of income-tax;

¹Ins. by s. 10 of the Indian Finance Act, 1948 (20 of 1948).

"(12-A) 'merged States' means all the states and parts of states which are administered by virtue of the States' Merger (Governors' Provinces) Order, 1949, as if they formed part of a Governor's province, or administered by virtue of the States Merger (Chief Commissioners' Provinces) Order, 1949, as if they were a Chief Commissioner's a Provinces."

LXVII/49.

(15) "prescribed" means prescribed by rules made under this Act;

(16) "profits" means profits as determined in accordance with Schedule I;

(17-a) 'Taxable Territories' shall have the meaning assigned to that expression by clause (14-A) of section 2 of the Indian Income-tax Act, 1922.

~~fully the whole of his time to the business of the firm.~~

3. (1) Every Commissioner of Income-tax, Appellate Assistant Commissioner of Income-tax, Inspecting Assistant Commissioner of Income-tax, and Income-tax Officer shall have the like powers under this Act and in relation to the same area and cases as he exercises under XI of 1922, the Indian Income-tax Act, 1922. Tax authorities

(2) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Central Board of Revenue:

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner of Income-tax in the exercise of his appellate functions.

4. Subject to the provisions of this Act, there shall, in respect of any business to which this Act applies, be charged, levied and paid on the amount of the taxable profits during any chargeable accounting period, a tax (in this Act referred to as "business profits tax") ¹which shall, in respect of any chargeable accounting period ending on or before the 31st day of March, 1947, be equal to sixteen and two-thirds per cent. of the taxable profits, and in respect of any chargeable accounting period beginning after that date, be equal to such percentage of the taxable profits as may be ²fixed by the annual Finance Act.]. Charge of tax.

Provided that—

(a) any profits which are, under the provisions of sub-section (3) of section 4 of the Indian Income-tax Act, 1922, exempt from income-tax, XI of 1922.

¹ Subs. for "which shall be equal to sixteen and two-thirds per cent. of the taxable profits" by s. 10 of the Indian Finance Act, 1948 (20 of 1948).

² The tax imposed shall in respect of any chargeable accounting period beginning after the 31st March, 1947, be an amount equal to ten per cent. of the taxable profits see s. 11, *ibid.*

5 Provided further that where the profits include any profits from an industrial undertaking which are exempt from income-tax under section 15C of the Indian Income-tax Act, 1922 (XI of 1922) the business profits tax otherwise payable on the whole of the taxable profits shall be reduced by an amount which bears to that business profits tax the same proportion as the amount of such inclusion bears to the whole profits.

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(ii) of clause (b) of sub-section (x) of section 15C of the Indian Income-tax Act, 1922, or of clause (c) of that sub-section: XI of 1922.

Provided that this Act shall not apply to any business the whole of the profits of which accrue or arise without ~~British India~~ where such business is carried on by or on behalf of a person who is resident but not ordinarily resident in ~~British India~~, unless the business is controlled in India:

[Provided further that where the profits of a part only of a business carried on by a person who is not resident in ~~British India~~ or not ordinarily so resident accrue or arise in ~~British India~~ or are deemed under the Indian Income-tax Act, 1922, so to accrue or arise, then, except where the business being the business of a person who is resident, but not ordinarily resident, in ~~British India~~ is controlled in India, this Act shall apply only to such part of the business, and such part shall for all the purposes of this Act be deemed to be a separate business];

Provided further that this Act shall not apply to any income, profits or gains of business accruing or arising within ~~an Indian State~~ unless such income, profits or gains are received or deemed under the provisions of the aforesaid Act to be received in or are brought into ~~British India~~ in any chargeable accounting period, or are assessable under section 42 of that Act.

6. Where a deficiency of profits occurs in any chargeable accounting period in any business, the taxable profits of the business shall be deemed to be reduced and relief shall be granted in accordance with the following provisions:—

(a) the aggregate amount of the taxable profits for the previous chargeable accounting periods shall be deemed to be reduced by the amount of the deficiency of profits and the amount of business profits tax payable in respect thereof shall be deemed to be reduced accordingly, and the relief necessary to give effect to the reduction shall be given by repayment or otherwise;

(b) where the amount of the deficiency of profits exceeds the aggregate amount of the taxable profits for the previous chargeable accounting periods or where there is no previous chargeable accounting period, the balance of the deficiency of profits or the whole of the deficiency, as the

¹ Ins. by s. 3 of the Income-tax and Business Profits Tax (Amendment) Act, 1947 (44 of 1947) (with effect from 12th April, 1947).

case may be, shall be applied in reducing any taxable profits for the next subsequent chargeable accounting period, and if and so far as it exceeds the amount of those profits, any taxable profits for the next subsequent chargeable accounting period and so on.

7. As from the date of any change in the persons carrying on a business, the business shall be deemed for all the purposes of this Act to have been discontinued and a new business to have been commenced:

Change in persons carrying on business.

Provided that where a change takes place in the persons carrying on a business and where except for such change relief would be allowable under section 6, the Central Board of Revenue may, if it thinks fit, allow such relief under that section as it considers just, having regard to the extent to which the persons directly or indirectly interested in the business before the change remain interested therein after the change.

8. (1) Where any interest, annuity, or other annual payment, or any royalty or rent, is payable by one company to another company, and one of those companies is a subsidiary of the other, or both are subsidiaries of a third company, and the recipient company is resident outside ~~British India~~, no allowance shall be made in respect of such payment in computing the profits or losses of the paying company.

Inter connected companies.

(2) Where—

(a) a company (hereinafter referred to as “the principal”) is resident in ~~British India~~ and is not a subsidiary of any other company resident in ~~British India~~; and

(b) during the whole or any part of any chargeable accounting period of the principal, another company resident or carrying on business within ~~British India~~ (hereinafter referred to as “the subsidiary”) is a subsidiary of the principal,

the capital or profits or losses of the subsidiary for such chargeable accounting period or part thereof shall be treated for the purposes of this Act as if they were the capital of, or as the case may be, profits or losses arising from the business of, the principal:

Provided that the profits of the subsidiary so treated shall not be exempted from business profits tax in the hands of the principal by reason of any exemption applicable to the principal under the proviso to section 4.

(3) Where the chargeable accounting periods of the principal and subsidiary are not co-terminous, such division and apportionment of the profits or losses of the subsidiary for any chargeable accounting period shall be made as will allocate the due proportion thereof to the relative chargeable accounting period or periods of the principal; and such division and apportionment shall be by reference to the proportion that the number of days of the chargeable accounting period of the subsidiary falling within the relative chargeable accounting period or periods of the principal bears to the total number of days in the chargeable accounting period of the subsidiary.

(4) For the purposes of this section a company shall be deemed to be a subsidiary of another company if and so long as not less than four-fifths of its ordinary share capital is beneficially owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies.

(5) The business profits tax payable by virtue of this section by the principal shall, for the purposes of section 10, be allocated by the income-tax Officer to the respective companies concerned in such proportion as in his opinion is just:

Provided that the principal shall have the same rights of appeal against an order of allocation made under this sub-section as it has under this Act against the amount of its business profits tax assessment.

Aggregation of profits in certain cases.

9. Where an individual ^{or a Hindu undivided family} is entitled to profits arising from more than one business, of which at least one is carried on by a firm in which he is a partner, the Income-tax Officer may, with the prior sanction of the Inspecting Assistant Commissioner of Income-tax, aggregate the shares of such individual in the profits or losses of all of such businesses and treat the sum of such aggregation as the profits of a business carried on by such individual and assess him accordingly: or it

Provided that if the accounting periods of such businesses are not co-terminous, the Income-tax Officer shall determine in respect of such individual his chargeable accounting period and shall make such divisions, apportionments and aggregation of the shares of such individual in the profits or losses of the several businesses as may be necessary to determine for such chargeable accounting period the total profits and gains of such individual therefrom:

Provided further that for the purposes of this section, a company, which is neither one in which the public are substantially interested, as defined in the *Explanation* to sub-section (1) of section 23A of the Indian Income-tax Act, 1922, nor a subsidiary company as defined in sub-section (4) of section 8 of this Act, shall be deemed to be a firm in which the persons having an interest in the company are partners, or, in the case of a sole-shareholder, a business carried on by that sole-shareholder, and the profits of such company shall be computed accordingly:

XI of 1922

Provided further that any profits or losses so aggregated for assessment upon an individual shall be excluded from the profits or losses of the respective businesses for the purposes of this Act; and no assessment under this Act shall be made in respect of any such business save in the names of the other partners therein. ^{and such individual or Hindu undivided family shall be treated as a working partner in relation to such business for the purpose of such}

Allowance of business profits tax in computing income for income-tax purposes.

10. The amount of the business profits tax payable by any person for any chargeable accounting period shall, in computing total income for the purposes of the relevant income-tax or super-tax assessment, be allowed as a deduction:

Provided that where, under the provisions of this Act relating to deficiencies of profits relief is given by way of repayment from business profits tax chargeable for any chargeable accounting period previous to

XI of 1922¹

that in which the deficiency occurs, the amount of the deduction allowed shall not be altered, but the amount repayable shall be taken into account in computing the profits and gains of the business for the purposes of income-tax as if it were a profit of the business accruing in the previous year (as determined for that business for the purposes of the Indian Income-tax Act, 1922) in which the deficiency of profits occurs

11. (1) The Income-tax Officer may, for the purposes of this Act, require any person whom he believes to be engaged in any business to which this Act applies, or to have been so engaged during any chargeable accounting period, or to be otherwise liable to pay business profits tax, to furnish within such period, not being less than forty-five days from the date of the service of the notice, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) with respect to any chargeable accounting period specified in the notice, the profits, ¹[taxable profits] of the business or the amount of deficiency, if any, available for relief under section 6 :

Issue of
notice for
assessment.

Provided that the Income-tax Officer may, in his discretion, extend the date for the delivery of the return.

(2) The Income-tax Officer may serve on any person, upon whom a notice has been served under sub-section (1), a notice requiring him on a date to be therein specified to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require, and may from time to time serve further notices in like manner requiring the production of such further accounts or documents or other evidence as he may require.

12. (1) The Income-tax Officer shall, by an order in writing after considering such evidence, if any, as he has required under section 11, assess to the best of his judgment the profits liable to business profits tax and the amount of business profits tax payable on the basis of such assessment, or if there is a deficiency of profits, the amount of that deficiency and the amount of business profits tax, if any repayable, and shall furnish a copy of such order to the person on whom the assessment has been made.

Assess-
ments.

(2) Business profits tax payable in respect of any chargeable accounting period shall be payable by the person carrying on, or treated as carrying on, the business in that period.

(3) Where two or more persons were carrying on the business jointly in the chargeable accounting period, the assessment shall be made upon them jointly and, in the case of a partnership, may be made in the partnership name.

(4) Where by virtue of the foregoing provisions an assessment could, but for his death, have been made on any person either solely or jointly with any other person or persons, the assessment may be made

¹ Ins. by s. 8 of the Income-tax and Business Profits Tax (Amendment) Act, 1947 (44 of 1947) (with effect from 12th April, 1947).

on his legal representative either solely or jointly with that other person or persons, as the case may be.

Power to
make pro-
visional
assess-
ments.

13. (1) The Income-tax Officer, before proceeding to make an assessment (in this section referred to as the regular assessment) under section 12, may, at any time after the expiry of the period specified in the notice issued under sub-section (1) of section 11 as that within which the return therein referred to is to be furnished, and whether the return has or has not been furnished, proceed to make in summary manner a provisional assessment of the taxable profits and the amount of business profits tax payable thereon.

(2) Before making such provisional assessment the Income-tax Officer shall give notice in the prescribed form to the person on whom assessment is to be made of his intention to do so, and shall with the notice forward a statement of the amount of the proposed assessment, and the said person shall be entitled to deliver to the Income-tax Officer at any time within fourteen days of receipt of the said notice a statement of his objections, if any, to the amount of the proposed assessment.

(3) On expiry of one month from the date of service of the notice referred to in sub-section (2), or earlier if the assessee agrees to the proposed assessment, the Income-tax Officer may, after taking into account the objections, if any, made under sub-section (2), make a provisional assessment, and shall furnish a copy of the order of assessment to the assessee:

Provided that assent to the amount of the assessment, or failure to make objection to it, shall in no way prejudice the assessee in relation to the regular assessment.

(4) In making any such provisional assessment the Income-tax Officer shall make allowance for any deficiencies of profits for previous chargeable accounting periods which are under the provisions of section 6 to be set off against the taxable profits of the chargeable accounting period in respect of which the assessment is being made:

Provided that, where such deficiencies of profits have not been determined under sub-section (1) of section 12, the Income-tax Officer shall estimate the amount thereof to the best of his judgment.

(5) There shall be no right of appeal against a provisional assessment made under this section, and it shall, until a regular assessment is made in due course under section 12, determine the amount of business profits tax due from the assessee.

(6) If, when a regular assessment is made in due course under section 12, the amount of business profits tax payable thereunder is found to exceed that determined as payable by the provisional assessment, it shall be reduced by the amount determined as payable by the provisional assessment.

(7) If, when a regular assessment is made in due course under section 12, the amount of business profits tax payable thereunder is found to be less than that determined as payable by the provisional

assessment, any excess of tax paid as a result of the provisional assessment shall be refunded to the assessee, together with interest at two *per cent. per annum* calculated from the date of payment of such excess tax to the date of the order of refund, both days inclusive.

14. If, in consequence of definite information which has come into his possession, the Income-tax Officer discovers that profits of any chargeable accounting period chargeable to business profits tax have escaped assessment, or have been under-assessed, or have been the subject of excessive relief, he may at any time within four years of the end of the chargeable accounting period in question serve on the person liable to such tax a notice containing all or any of the requirements which may be included in a notice under section 11, and may proceed to assess or reassess the amount of such profits liable to business profits tax, and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under that section.

Profits
escaping
assessment.

15. If the Income-tax Officer, the Appellate Assistant Commissioner of Income-tax or the Commissioner of Income-tax, in the course of any proceedings under this Act, is satisfied that any person has, without reasonable cause, failed to furnish the return required under sub-section (7) of section 11, or to produce or cause to be produced the accounts or documents or other evidence required by the Income-tax Officer under sub-section (2) of that section, or has concealed particulars of the profits of the business, or has deliberately furnished inaccurate particulars of such profits, he may direct that such person shall pay by way of penalty, in addition to the amount of any business profits tax payable, a sum not exceeding—

Penalties.

- (a) where the person has failed to furnish the return required under sub-section (7) of section 11, the amount of the business profits tax payable;
- (b) in any other case, the amount of business profits tax which would have been avoided if the return made had been accepted as correct:

Provided that the Income-tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner of Income-tax.

16. (1) Any person objecting to the amount of business profits tax for which he is liable as assessed by the Income-tax Officer or denying his liability to be assessed under this Act, or objecting to any penalty imposed by the Income-tax Officer, or to the amount of any deficiency of profits as assessed by the Income-tax Officer, or to the amount allowed by the Income-tax Officer by way of relief under any provision of this Act or to any refusal by the Income-tax Officer to grant relief, may appeal to the Appellate Assistant Commissioner of Income-tax.

Appeals to
Appellate
Assistant
Commissioner of
Income-
tax.

(2) An appeal shall ordinarily be presented within forty-five days of receipt of the notice of demand relating to the assessment or penalty objected to, or in the case of an appeal against the assessment of a deficiency of profits, within thirty days of the receipt of the copy of the

order determining the deficiency, or in the case of an appeal against the amount of a relief granted or a refusal to grant relief, within forty-five days of the receipt of the intimation of the order granting or refusing to grant the relief, but the Appellate Assistant Commissioner of Income-tax may admit an appeal after the expiration of that period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(3) An appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(4) The Appellate Assistant Commissioner of Income-tax shall hear and determine the appeal and, subject to the provisions of this Act, shall pass such orders as he thinks fit, and such orders may include an order enhancing the assessment or a penalty:

Provided that an order enhancing an assessment or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(5) The procedure to be adopted in the hearing and determination of appeals shall be in accordance with the rules made by the Central Board of Revenue in relation to income-tax.

Appeal to
Appellate
Tribunal.

17. Any Income-tax Officer or any person in respect of whose business an order under section 12 has been passed and who objects to an order passed by an Appellate Assistant Commissioner of Income-tax under section 15 or section 16 may, within the prescribed time and in the prescribed manner, appeal against such order to the Appellate Tribunal constituted under the Indian Income-tax Act, 1922, and that Tribunal shall have all such powers in disposing of the appeal as it has in respect of appeals preferred to it under the said Act.

Rectifica-
tion of
mistakes.

18. The Commissioner of Income-tax may, at any time within four years from the date of any order passed by any Appellate Assistant Commissioner of Income-tax or Income-tax Officer under this Act, rectify any mistake in any evidence recorded during assessment or appellate proceedings, or any mistake apparent from the record and shall within the like period rectify any mistake apparent from the record which has been brought to his notice by a person to whose business this Act applies:

Provided that no such rectification shall be made having the effect of enhancing the liability of any person unless that person has been given a reasonable opportunity of being heard.

Agreement
for avoi-
dance of
double
taxation in
India and
Pakistan.

[18A. The Central Government may enter into an agreement with Pakistan for the avoidance of double taxation of profits under this Act and under the corresponding law in force in Pakistan, and may, by notification in the official Gazette, make such provision as may be necessary for implementing the agreement.]

¹ Ins. by the Sch. of the India (Adaptation of Income-tax, Profits tax and Revenue Recovery Acts) Order, 1947 (G.G.O. 81, dated the 10th December 1947) (with effect from 15th August, 1947)—see Gazette of India, 1947, Extraordinary, p. 1932.

XI of 22. 19. The sections of the Indian Income-tax Act, 1922, as applied to excess profits tax by virtue of ¹[sections 21 and 21A] of the Excess Profits Tax Act, 1940, shall, in so far as they are not repugnant to the provisions of this Act ²[and with such modifications, if any, as may be prescribed.], apply to business profits tax as they apply to excess profits tax.

Application
of p ovi-
of Act

XI of 1922. 20. (1) Notwithstanding anything contained in the Indian Income-tax Act, 1922, all information contained in any statement or return made or furnished under the provisions of that Act or obtained or collected for the purposes of that Act may be used for the purposes of this Act.

Income-
tax papers
to be avail-
able for
the purposes
of this
Act.

(2) All information contained in any statement or return made or furnished under the provisions of this Act or obtained or collected for the purposes of this Act may be used for the purposes of the Indian Income-tax Act, 1922.

21. If any person fails, without reasonable cause or excuse, to furnish in due time any return or statement, or to produce, or cause to be produced, any accounts or documents required to be produced under section 11, he shall be punishable with fine which may extend to five hundred rupees, and with a further fine which may extend to fifty rupees for every day during which the default continues.

Failure to
deliver
returns or
statements.

22. If a person makes in any return required under section 11 any statement which is false, and which he either knows or believes to be false or does not believe to be true, he shall be punishable with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

False state-
ments.

23. (1) A person shall not be proceeded against for an offence under section 21 or section 22 except at the instance of the Inspecting Assistant Commissioner of Income-tax.

Institution
of procee-
dings and
composi-
tion of
offences.

XLV of
1869.

(2) No prosecution for an offence punishable under section 21 or section 22 or under the Indian Penal Code shall be instituted in respect of the same facts as those in respect of which a penalty has been impos-

23A. Power to make exemption, etc. in relation to merged territories: If the Central Govt. considers it necessary or expedient so to do, for avoiding any hardship or anomaly, or removing any difficulty, that may arise as a result of the extension of this Act to the merged territories the Central Government may, by general or special order, make an exemption, reduction in rate or other modification in respect of business profits tax in favour of any class of profits, or in regard to the whole or any part of the profits of any person or class of persons.

o
use.

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For amendments to these Rules see Gazette of India, 1948, Pt. I, p. 82.

(a) prescribe the procedure to be followed on appeals, applications for rectification of mistakes, and applications for refunds;

(b) provide for any matter which by, or under, this Act is to be prescribed.

(3) The power to make rules conferred by this section shall be exercised in like manner as the power to make rules under section 59 of the Indian Income-tax Act, 1922.

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SCHEDULE I.

[See SECTION 2 (16)].

Rules for the computation of profits for purposes of Business Profits Tax.

1. The profits of a business during any chargeable accounting period shall be separately computed, and shall, subject to the provisions of this Schedule, be computed in accordance with the provisions of section 10 of the Indian Income-tax Act, 1922:

XI of 1922.

Provided that any sums other than any interest paid by a firm to a partner of the firm excluded under the proviso to clause (ii) of sub-section (2) or clause (a) of sub-section (4) of that section from the allowances made in computing the profits of the business for the purposes of income-tax shall, if paid, be included in those allowances when computing the profits of the business for the purposes of business profits tax:

Provided further—

(a) that any sums received or credited in a chargeable accounting period which by virtue of rule 9 of Schedule I to the Excess Profits Tax Act, 1940, have been treated as business receipts for the purpose of assessment to excess profits tax, and

XV of 1940.

(b) any expenditure or loss incurred in any chargeable accounting period, allowance in respect of which has been made for excess profits tax purposes,

shall be disregarded in computing the profits or losses of the chargeable accounting period:

Provided further that where a chargeable accounting period is not an accounting period, the profits or losses of the business during the accounting periods wholly or partly included within the chargeable accounting period shall be so computed as aforesaid, and such division and apportionment to specific periods of those profits or losses and such aggregation of those profits and losses, or any apportioned part thereof, shall be made as appears necessary to arrive at the profit during the chargeable accounting period; and any such apportionment shall be made in proportion to the number of days in the respective periods:

2. (1) The principle of adding the allowance for depreciation for any one period to the allowance for depreciation for any subsequent period and deeming it to be part of the allowance for such subsequent period shall not be followed.

(2) Nothing in this Act shall be construed as permitting the application, in computing profits for the purposes of business profits tax, of the provisions of sub-section (2) of section 24 of the Indian Income-tax Act, 1922.

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3. Income received from investments or other property shall be included in the profits only as provided in this rule, that is to say,—

(a) in the case of the business of a building society, or a banking business, insurance business or business consisting wholly or mainly in the dealing in or holding of investments or other property, the profits shall include all income received from investments or other property; or

(b) in the case of a business part of which consists in banking, insurance or dealing in investments or other property, not being a business to which clause (a) applies, the profits shall include all income received from investments or other property held for the purposes of that part of that business:

Provided that—

(i) income received directly or indirectly by way of dividend or distribution of profits from a body corporate carrying on business as defined in this Act, and

(ii) income to which the persons carrying on the business are not beneficially entitled,

shall in no case be included.

4. (1) In the case of a business carried on in any accounting period which constitutes or includes a chargeable accounting period, by a company, the directors whereof have throughout that accounting period a controlling interest therein, no deduction shall be made in respect of directors' remuneration in computing the profits for that accounting period.

(2) Where, in the case of a business carried on by a company in any accounting period which constitutes or includes a chargeable accounting period, the directors of the company have during any part of that accounting period a controlling interest therein, and the case is not one to which sub-rule (1) applies, the profits of the accounting period shall be computed as if the directors of the company had no controlling interest therein, and to the part thereof appropriate to the chargeable accounting period ascertained in accordance with the third proviso to rule 1 shall be added the directors' remuneration for that part of the chargeable accounting period during which the directors of the company had a controlling interest therein.

(3) In this rule the expression "directors' remuneration" does not include—

- (a) the remuneration of any director who is required to devote substantially the whole of his time to the service of the company in a managerial or technical capacity and is not the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control more than five per cent. of the ordinary share capital of the company, or
- (b) the remuneration of any managing agent where such remuneration is included in the profits of the managing agent's business for the purposes of the business profits tax.

5. (1) In computing the profits of any chargeable accounting period no deduction shall be allowed in respect of expenses in excess of the amount which the Income-tax Officer considers reasonable and necessary, having regard to the requirements of the business, and, in the case of directors' fees or other payments for services, to the actual services rendered by the person concerned :

Provided that no disallowance under this rule shall be made by the Income-tax Officer unless he has obtained the prior authority of the Inspecting Assistant Commissioner of Income-tax.

(2) Any person who is dissatisfied with the decision of the Income-tax Officer under this rule may appeal in the prescribed time and manner to the Appellate Tribunal referred to in section 17.

SCHEDULE II.

[See SECTION 2 (1)].

Rules for computing the capital of a company for purposes of Business Profits Tax.

1. For the purposes of ascertaining the abatement under this Act in respect of any chargeable accounting period, the capital of a company shall be computed in accordance with the following rules.

2. (1) Where the company is one to which clause (a) of rule 3 of Schedule I applies, its capital shall be the sum of the amounts of its paid-up share capital and of its reserves in so far as they have not been allowed in computing the profits of the company for the purposes of the Indian Income-tax Act, 1922. (21 of 1922).

~~(2) Where the company is one to which clause (b) of rule 3 of Schedule I applies, its capital, ascertained in accordance with sub-rule (1) of this rule shall be diminished by the cost to it of its investments or other property, the income from which is not includible in the profits, so far as that cost exceeds any debt for money borrowed by it.~~

~~(3) In all other cases, the capital shall be the sum ascertained in accordance with the said sub-rule, diminished by the cost to the com-~~

Explanation: A reserve or paid up share capital brought into existence by creating or increasing (by revaluation or otherwise) any book asset is not capital for the purposes of ascertaining the abatement under this Act in respect of any chargeable accounting period.*

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3. So much of the premium realized by a company from the issue of any of its shares as is retained in the business shall be regarded as forming part of its paid-up capital for the purposes of rule 2.

XII of 1942,

XVI of
1943.

4. Any deposits with the Central Government under section 10 of the Indian Finance Act, 1942, or section 2 of the Excess Profits Tax Ordinance, 1943, shall not be regarded as investment or other property for the purposes of this Schedule.

THE RUBBER (PRODUCTION AND MARKETING) ACT, 1947.

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¹ Ins. by s. 8 of the Income-tax and Business Profits Tax (Amendment) Act, 1947 (44 of 1947) (with effect from 12th April, 1947).

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¹Act No. XXIV of 1947.

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[18th April, 1947.]

An Act to provide for the development under ^{the} central control of the rubber industry ~~so far as regards the production and marketing of rubber, and for regulating the export from, and import into, ²[the Provinces] of rubber.~~

WHEREAS it is expedient to provide for the development under central control of the rubber industry so far as regards the production and marketing of rubber, and for regulating the export from, and the import into, ²[the Provinces] of rubber;

It is hereby enacted as follows:—

1. (1) This Act may be called the Rubber (~~Production and Marketing~~) Act, 1947.

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whole

2. Declaration as to expediency of Union control.— It is hereby declared that it is expedient in the public interest that the Union should take under its control the rubber industry.

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3. In this Act, unless there is anything repugnant in the subject or context,—

- (a) "Board" means the ~~Indian~~ Rubber Board constituted under this Act;
- (b) "dealer" means any person who deals in rubber, whether wholesale or retail, or holds stocks of rubber, and includes the representative or agent of a dealer;

¹For Statement of Objects and Reasons, see Gazette of India, 1947, Pt. V, p. 11; for Report of Select Committee, see *ibid* p. 350.

²Subs. by the A.O. 1948 for "British India".

³Subs. by the A.O. 1948 for "the whole of British India".

- (c) "estate" means any area administered as one unit which contains land planted with rubber plants;
- (d) "export" and "import" mean respectively taking out of, and bringing into, [the Provinces] by sea, land or air;
- (e) "manufacturer" means any person engaged in the manufacture of any article in the making of which rubber is used;
- (f) "owner" includes any agent of an owner and a mortgagee in possession and a lessee of an estate;
- (g) "prescribed" means prescribed by rules made under this Act;
- (h) "rubber" means—
 - (i) crude rubber, that is to say, rubber prepared from the leaves, bark or latex of any rubber plant;
 - (ii) the latex of any rubber plant, whether fluid or coagulated, in any stage of the treatment to which it is subjected during the process of conversion into rubber;
 - (iii) latex (dry rubber content) in any state of concentration, and includes scrap rubber, sheet rubber, rubber in powder and all forms and varieties of crepe rubber, but does not include rubber contained in any manufactured article;
- (i) "rubber plant" includes plants, trees, shrubs or vines of any of the following:—
 - (i) *Hevea Brasiliensis* (Para Rubber),
 - (ii) *Manihot Glaziovii* (Ceara Rubber),
 - (iii) *Castilloa elastica*,
 - (iv) *Ficus elastica* (Rambong), and
 - (v) any other plant which the Board may, by notification in the *Gazette of India*, declare to be a rubber plant for the purposes of this Act;
- (j) "Rubber Production Commissioner" means the Rubber Production Commissioner;
- (k) "small grower" means an owner whose estate does not exceed fifty acres in area.

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There shall be a Board to be called the ~~Indian~~ Rubber Board.

(2) The Board shall be a body corporate by the name of the Indian Rubber Board having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

(3) The Board shall consist of—

- (a) two members representing the Central Government to be nominated by that Government;

(3) The Board shall consist of--

(a) a Chairman to be appointed by the Central Government;

(b) two members to represent the State of Madras, one of whom shall be a person representing rubber producing interests;

Vic and may (c) eight members to represent the State of Kwrala, six of whom shall be persons representing rubber producing interests, three of such six being persons representing the small growers.

the (d) ten members to be nominated by the Central Government, of whom two shall represent the manufacturers and four labour;

Mer fo: Ho (e) three members of Parliament of whom two shall be elected by the House of the People and one by the Council of States; and

(f) the Rubber Production Commissioner, ex-officio.

(4) The persons to represent the States of Madras and Kerala shall be elected or nominated as may be prescribed.

(5) Any Officer of the Central Government when deputed by that Government in this behalf shall have the right to attend the meetings of the Board and take part in the proceedings thereof but shall not be entitled to vote.

(4) The Board shall elect one of its members to be its Chairman

6. Salary and allowances of Chairman.-- The Chairman shall be entitled to such salary and allowances and be governed by such conditions of service in respect of leave, pension, provident fund and other matters as may from time to time be fixed by the Central Government.

6A. Executive officers of the Board.-- (1) The Central Government shall appoint a Rubber Production Commissioner to exercise such powers and perform such duties under the direction of the Board as may be prescribed.

(2) The Central Government shall appoint a Secretary to the Board to exercise such powers and perform such duties under the direction of the Board as may be prescribed or as may be delegated to him by the Chairman;

(3) The Rubber Production Commissioner and the Secretary to the Board shall be entitled to such salaries and allowances and be governed by such conditions of service regarding leave, pension, provident fund and other matters as may be fixed by the Central Government.

(2) The Central Government shall, in consultation with the Board, appoint a Secretary to the Board to exercise such powers and perform such duties under the direction of the Board as may be prescribed or as may be delegated to him by the Rubber Production Commissioner.

(3) The Rubber Production Commissioner and the Secretary shall not undertake any work unconnected with their duties under this Act, except with the permission of the Central Government.

7. (1) The Board shall, for the purposes of section 13, constitute a Committee to be called the Rubber Price Advisory Committee consisting of— Comm
of the
Board.

(a) four persons to be elected by the Board, of whom two shall be members of the Board representing rubber producing interests and two shall be members representing manufacturers, and

(b) three members of the Board, to be nominated respectively by the Central Government, the Government of Travancore and the Government of Cochin in this behalf, none of whom shall be a member representing rubber producing interests or manufacturers.

(2) The Board may appoint such ~~other~~ Committees as may be necessary for the efficient performance of its duties and functions under this Act. LIV/

(3) The Board shall have the power to co-opt as members of any Committee appointed under sub-section (2) such number of persons who are not members of the Board, as it may think fit.

(4) The Board may appoint and authorise agents to discharge on its behalf any of its functions in relation to the marketing or storing of rubber.

8. (1) It shall be the duty of the Board to promote by such measures as it thinks fit the development of the rubber industry ~~so far as regards the production and marketing of rubber.~~ Functi
of the
Board.
LI

(2) Without prejudice to the generality of the foregoing provision, the measures referred to therein may provide for—

(a) undertaking, assisting or encouraging scientific technological and economic research;

(b) training students in improved methods of planting, cultivation, manuring and spraying;

(c) the supply of technical advice to rubber growers;

(d) improving the marketing of rubber;

(f) securing better working conditions and the provisions and improvement of amenities and incentives for workers;

(g) carrying out any other duties which may be vested in the Board under rules made under this Act.

8A. Power of the Board to import rubber for sale, or to purchase rubber, in the internal market.- It shall be lawful for the Board with the previous approval of the Central Govt. to import rubber for sale, or to purchase rubber, in the internal market at such prices as the Central Govt. may fix.

8-B. Consultation with the Board.- Before taking any action touching the affairs of the Board under this Act, the Central Government shall ordinarily consult the Board:

Provided that no action taken by the Central Government shall be void on account of non-consultation.

9A. General fund.- (1) To the general fund shall be credited --

(a) all sums forming the funds of the Board immediately before the commencement of the Rubber (Production and Marketing Amendment) Act, 1954;

(b) all amounts paid to the Board by the Central Government under sub-section (7) of section 12.

(2) The General fund shall be applied--

(a) to meet the expenses of the Board;

(b) to meet the costs of the measures referred to in section 8;

(c) to meet the expenditure incurred in the performance of its functions under this Act or under rules made thereunder; and

(d) for making such grants to rubber estates or for meeting the cost of such other assistance to rubber estates as the Board may think necessary for the development of such estates.

9B. Pool fund.- (1) To the pool fund shall be credited--

(a) all sums realized by sales of rubber imported or purchased under section 8-A;

(b) any other sum which the Board may, with the previous approval of the Central Government, transfer from the general fund to the pool fund.

VIII of
1878.

(2) The pool fund shall be applied only to the ~~rehabilitation~~ rehabilitation of rubber growers in such manner as may be prescribed.

12. (1) With effect from such date as may be notified by the Central Government in this behalf, there shall be levied and collected as a cess for the purposes of this Act a duty of excise on all rubber produced in ^{Imposition of rubber cess} ~~the Provinces~~ at such rate ~~as the Central Government may on the recommendation of the Board,~~ by the same or a like notification, from time to time fix.

(2) The said duty of excise shall be payable by the owner of the estate on which the rubber is produced, and shall be paid by him to the Board within one month from the date on which he receives a notice of demand therefor from the Board.

(3) The said duty of excise may be recovered as if it were an arrear of land-revenue.

(4) For the purpose of enabling the Board to assess the amount of the duty of excise payable by the owner of an estate under this section—

(a) the Board shall, by notification in the Gazette of India, fix the period in respect of which assessments shall be made, and

(b) without prejudice to the provisions of section 20, every owner of an estate shall furnish to the Board a return stating the total amount of rubber produced on the estate in each such period, not later than fifteen days after the expiry of the period to which the return relates:

Provided that in respect of an estate situated only partly in ^{India} ~~the Provinces~~, the owner shall in the said return show separately the amounts of rubber produced within and ^{India} ~~outside the Provinces~~.

(5) If any owner of an estate fails to furnish in due time the return referred to in sub-section (4) or furnishes a return which the Board has reason to believe is incorrect or defective, the Board may assess the amount payable by that owner in such manner as may be prescribed.

(6) Any owner of an estate aggrieved by an assessment made under this section may within three months of the service of the notice under sub-section (2) apply to the District Judge for the cancellation or modi-

(7) The proceeds of the duty of excise collected by the Board and any of the fees levied under this Act (all of which shall form part of the Consolidated Fund of India) reduced by the cost of collection as determined by the Central Govt. shall, if Parliament by appropriation made by law in this behalf so provides, be paid to the Board for being utilized for the purposes of this Act.

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² For such orders, see Gazette of India, 1947, Pt. I, p. 1380 and *ibid*, Extraordinary p. 1389.

(2) Any such order may fix different maximum or minimum prices to be charged in the course of businesses of different classes for the same description of rubber.

(3) If any person buys or sells, or agrees to buy or sell, rubber at a price which is more than the maximum price, or less than the minimum price, fixed under sub-section (1) in that behalf, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Licensing of
transac-
tions in
rubber.

14. No person shall sell or otherwise dispose of, and no person shall buy or otherwise acquire, rubber except under and in accordance with the terms of a general or special licence issued by the Board :

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Provided that nothing in this section shall apply to the sale by any person of rubber produced in an estate of which he is a registered owner.

Provisions
regarding
licences un-
der section
14.

15. (1) Every general licence issued under section 14 shall be published by the Board in the Gazette of India and in such newspapers as the Board may direct.

(2) A special licence issued under section 14 shall be valid only for such period as may be specified therein :

Provided that the Board may from time to time extend the period of validity of any such licence.

(3) The Board may at any time for reasons to be recorded by it in writing revoke a special licence granted under section 14, and on such revocation it shall be returned to the Board by the person to whom it was issued.

(4) No application for a special licence made by a person who was carrying on business as a dealer or manufacturer immediately before the commencement of this Act shall be rejected by the Board except for special reasons to be recorded in writing.

Restriction
on posses-
sion of
rubber.

16. (1) No person not being the owner or occupant of an estate or a person who has acquired rubber under a general or special licence issued by the Board under section 14 shall have any rubber in his possession.

(2) Any Court trying a contravention of sub-section (1) may, without prejudice to the provisions of section 26, direct that any rubber in respect of which the Court is satisfied that such contravention has been committed shall be forfeited to His Majesty.

Licences
for plant-
ing or re-
planting.

17. (1) No person shall plant or replant rubber except under and in accordance with the conditions of a special licence issued by the Board.

(2) A licence issued under this section shall specify the area in which rubber may be planted or replanted and the period for which the licence shall be valid.

(3) No licence issued under this section shall be transferable except with the land to which it relates.

18. (1) Every holder of a licence issued under section 17 shall, at such times as the Board may require, furnish to it a report specifying the areas newly planted or replanted during the period to which the report relates and containing such other particulars as may be required by the Board.

Reports to be submitted by licencees.

(2) The Board may revoke any licence issued under section 17, if it is satisfied that the licence was obtained by misrepresentation or fraud or if the licensee contravenes any of the terms of the licence or if the licensee fails to submit the report referred to in sub-section (1).

19. The Board may levy such fees as may be prescribed for the issue and renewal of special licences under section 14, section 15 or section 17.

Fees for special licences.

20. Subject to such exceptions as may be prescribed, every owner, every manufacturer, and every holder of a special licence issued under section 14 not being an owner or a manufacturer, shall—

Submission of returns and maintenance of accounts.

(a) submit to the Board such returns at such times, in such form, and containing such particulars, as may be pres-

LIV/54.

(c) permit any person authorized in this behalf by the Central Government or by the Board or any member of the Board authorized by the Chairman in writing or any officer of the Board to inspect the accounts and records referred to in clause (b).

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reasonable time inspect any place of storage of rubber, any estate and any other land and

tion
ss.

21. Inspection of land and premises.— Any person authorized in this behalf by the Central Government or by the Board or any member authorized by the Chairman in writing or any officer of the Board may at any reasonable time inspect any place of business of a dealer or any factory ~~any place~~ or other premises of a manufacturer, for the purpose of verifying any statement or return submitted under this Act or for any other purposes of this Act.

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issue or renew, or revoking, a special licence under the provisions of section 14, section 15 or section 17 may, within sixty days of the making of the order and on payment of the prescribed fee, appeal to the Central Government, and the decision of the Central Government thereon, and subject only to such decision the order of the Board, shall be final and shall not be called in question in any Court.

Appeal.

24. (1) The Board shall keep such accounts, in such manner and in such form as may be prescribed, of all moneys received and expended by it.

Accounts of the Board.

(x) the deposit of the funds of the Board banks and the investment of such funds;

(xi) the re-appropriation of the estimates savings, from one budget head to any other head;

(2) In particular, and without prejudice to the generality of the foregoing power, under this section may provide for all or of the following matters, namely:-

(i) ~~maxim~~ principles regulating the election of members of the Board by the Central Government under clause (d) of sub-section (3) of section 3 and the election or nomination of the members referred to in clause (b) and (c) thereof;

Provided that before making any nomination or exercise of its powers the Central Government shall select for panels of names from the respective sections or divisions recognised by it of the interests connected with rubber to in clause (d);

(ii) the term of office of members of the Board and the circumstances in which and the authority by which members may be removed and the filling of casual vacancies in the Board;

(iii) the procedure to be followed in the meetings of the Board and at committees thereof, the conduct of business, and the number of members which shall form a quorum at any meeting;

(iv) the maintenance by the Board of a register of business translated by the Board, and the distribution of copies thereof to the Central Government;

(v) the holding of a minimum number of meetings of the Board every year;

(vi) the powers of the Board, its committees and committees thereof with respect to the raising of expenditure and the powers and duties of the Rubber Production Commissioner and the Secretary of the Board;

(vii) the conditions subject to which the Board may incur expenditures outside India;

(viii) the preparation of budget estimates, the receipt and expenditure of the Board and the authority by which the estimates are to be sanctioned;

(ix) the maintenance of the accounts of the Board and the audit of the accounts;

and as soon as may be after they are made, be laid before both Houses of Parliament.

(2) If the person committing any offence under sub-section (1) is a company, every person who at the time the offence was committed was in charge of, and was responsible, to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(3) Notwithstanding anything contained in sub-section (2) where an offence under sub-sec. (1) has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this section

(a) 'company' means any body corporate, and includes a firm or other association of individuals; and

(b) 'director' in relation to a firm means ~~any body corporate and includes any firm or other association of individuals~~ and a partner in the firm.

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procedure
for prosecution.

27A. Jurisdiction of courts.— No court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence punishable under this Act.

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the Central Government may, notwithstanding anything hereinbefore contained,—

powers of
the Central
Government.

(a) exercise any of the powers conferred by this Act upon the Board;

(b) exercise any of the powers conferred by sub-section (1) of section 6, section 11 or section 13 on the Central Government without consulting the Board, or as the case may be, the Rubber Price Advisory Committee.

THE CONTROL OF SHIPPING ACT, 1947. •

¹Act No. XXVI of 1947.

[18th April, 1947]

An Act to provide for the control of shipping.

WHEREAS it is expedient to provide for the control of shipping for a limited period;

It is hereby enacted as follows:—

Short title,
extent,
commen-
cement,
and
duration.

1. (1) This Act may be called the Control of Shipping Act, 1947.

(2) It extends to ²[the whole of India], and applies also to, and to persons on, ships registered ³[in India], wherever they may be.

(3) It shall be deemed to have come into force on the 25th day of March, 1947, and it shall remain in force only up to the 31st day of March, ~~“1950”~~: 1958 (12/524)

omitted
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Provided that the Central Government may, by notification in the official Gazette, direct that it shall remain in force for a further period not exceeding one year.

Interpreta-
tion.

2. In this Act, unless there is anything repugnant in the subject or context,—

⁵[(a)] “Coasting trade of India” means the carriage by water of passengers or goods from any port or place in India to any other port or place in the continent of India;

⁵[(b)] “master” and “passenger” have the meanings respectively assigned to them in the Indian Merchant Shipping Act, 1923;

XXI of,
1923.

⁵[(c)] “owner” includes the agent of an owner;

⁵[(d)] “prescribed” means prescribed by rules made under section 9;

⁵[(e)] “ship” does not include a ship of less than 150 gross registered tons or a sailing ship;

⁵[(f)] “Shipping Authority” means any authority or officer authorised by the Central Government by ⁶notification in the official Gazette to perform the functions of a Shipping Authority under this Act.

¹For Statement of Objects and Reasons, see Gazette of India, 1947, Pt. V, p. 263; for Report of Select Committee, see *ibid.*, p. 363.

²Subs. by s. 3 of the Control of Shipping (Amendment) Act, 1948 (27 of 1948) for “all the Provinces of India” which had been subs. for “the whole of British India” by the A.O. 1948.

³Subs. by s. 3 of Act 27 of 1948 for “in the Provinces” which had been subs. for “in British India” by the A.O. 1948.

⁴Subs. by s. 3 of Act 27 of 1948 for “1948”. Before this, the period was extended upto 1st April 1949 by a notification, see Gazette of India, 1948, Extraordinary, p. 523.

⁵Clause (a) was ins. and the original clauses (a) to (e) re-lettered (b) to (f), respectively, by s. 4 of Act 27 of 1948.

⁶The Controller of Indian Shipping, Bombay, authorised, see Gazette of India, 1947, Pt. I, p. 624.

3. (1) No ship registered in ¹[India] shall be taken to sea from a port or place within or outside ²[India] except under a valid licence granted by a Shipping Authority under this section. Licences,

(2) A licence granted under this section may be either a general licence or a specified voyage licence.

(3) A general licence shall remain valid until it is revoked by the Shipping Authority which granted it, and a specified voyage licence shall be valid only for the particular voyage for which it is granted.

(4) A licence granted under this section may contain such limitations and conditions as the Shipping Authority granting it may think fit to impose with respect to the trades in which the ship may engage and the voyages which it may undertake, and such limitations and conditions may be imposed so as to apply to the ship wherever it may be, or while in such waters or engaged in such trades or on such voyages, as may be specified.

(5) When a licence ceases to be valid, the person to whom it was granted shall, without unreasonable delay, return it or cause it to be returned to the Shipping Authority which granted it.

XX of 1946 • (6) For the avoidance of doubts it is hereby declared that any licence granted under an order made under rule 65 of the Defence of India Rules or that rule as continued in force by the Emergency Provisions (Continuance) Ordinance, 1946, and valid immediately before the expiry of the said Ordinance shall continue to be valid according to its tenor and shall be deemed to have been granted under this section.

²[3A. (1) No ship shall engage in the coasting trade of India except under a valid licence granted by a Shipping Authority under this section.

Licences for
Coasting
trade of
India.

(2) A licence granted under this section may be either a general licence or a specified voyage licence or a licence for a specific period and shall be subject to such conditions as may be specified by the Shipping Authority granting the licence.

(3) The Shipping Authority may in its discretion at any time, revoke, cancel or modify a licence granted under this section."

4. Without prejudice to the provisions of section 127 of the Indian Merchant Shipping Act, 1923, no officer of Customs shall grant a port-clearance to a ship registered in ³[India] ⁴[or to a ship engaged in the coasting trade of India] until after the production by the owner or master thereof of a valid licence granted under this Act in respect of the ship.

No port-
clearance
until licence
is produced

¹ Subs. by s. 2 of the control of Shipping (Amendment) Act, 1948 (27 of 1948), for "the Provinces" which had been subs. for "British India" by the A.O. 1948.

² Ins. by s. 5 of Act 27 of 1948.

³ Subs. by s. 2, *ibid*, for "the Provinces" which had been subs. for "British India" by the A.O. 1948.

⁴ Ins. by s. 6 of Act 27 of 1948.

Power to
give direc-
tions.

5. (1) The Shipping Authority which granted a licence in respect of a ship under section 3 may, from time to time while the licence is valid, by order in writing give directions with respect to—

- (a) the ports or places, whether within or outside ¹[India], to which, and the routes by which, the ship shall proceed for any particular purpose;
- (b) the classes of passengers or cargo which may be carried in the ship;
- (c) the order of priority in which passengers or cargo may be taken on or put off the ship at any port or place, whether within or outside ¹[India];

(2) The Central Government or any Shipping Authority may from time to time by order in writing give general or special directions applicable to any ship registered outside ¹[India] and about to proceed from a port or place in ¹[India] to any port or place in the continent of India with respect to the order of priority in which passengers or cargo may be taken on the ship at such port or place in ¹[India]:

Provided that no directions under this sub-section shall apply to any such ship which is not taking on passengers or cargo at a port or place in ¹[India] for discharge at any port or place in the continent of India.

Power to
fix shipping
rates.

6. The Central Government may from time to time, by order published in the official Gazette, fix in the prescribed manner the rates at which any ship, registered in ¹[India] may be hired, and the rates which may be charged for the carriage of passengers or cargo taken on any ship, whether registered in ¹[India] or not, at a port or place in ¹[India] for discharge at any port or place in the continent of India.

Power to
call for in-
formation.

7. A Shipping Authority may, by notice served personally or by post, require—

- (a) the master or owner of any ship in respect of which a licence granted by the Shipping Authority under this Act is in force, or
- (b) the master or the agent in ¹[India] of the owner of any ship in respect of which any directions have been or may be given under sub-section (2) of section 5,—

to furnish, within the period specified in the notice, information regarding any of the following matters, namely:—

- (i) the classes of passengers and cargo which the ship is about to carry or is capable of carrying ²[or has carried during any specified period.]

¹ Subs. by s. 2 of the Control of Shipping (Amendment) Act, 1948 (27 of 1948), for "the Provinces" which had been subs. for "British India" by the A.O. 1948.

² Ins. by s. 7 of Act 27 of 1948.

- (ii) the rates of passenger fares and freight charges applicable to the ship;
- (iii) any other matter which may be prescribed.

8. (1) If the provisions of sub-section (1) of section 3 or of an order under section 6 or, without reasonable excuse, any limitations or conditions contained in a licence granted under this Act or any directions given under section 5, are contravened, the master and the owner (or in the case of a ship registered outside ¹[India], the agent in ¹[India] of the owner) of the ship in respect of which the contravention has taken place shall each be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

Penalties
and
procedure.

(2) If any person on whom a notice has been served under section 7 fails to furnish the information required within the specified time or, in furnishing such information, makes any statement which he knows to be false in any material particular, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

(3) If any licence is not returned to the Shipping Authority which granted it within a reasonable period after it has ceased to be valid, the person to whom it was granted shall be punishable with fine which may extend to one hundred rupees.

(4) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this section.

(5) If the person committing an offence punishable under this section is a company or other body corporate, every managing director, manager, secretary or other officer or agent thereof shall, unless he proves that he exercised all due diligence to prevent the commission of the offence, be deemed to be guilty of such offence.

9. (1) The Central Government may, by notification in the official Gazette, make ²rules for carrying out the purposes of this Act.

Power to
make rules

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for any of the following matters, namely:—

- (a) the forms of licences granted under this Act;
- (b) the manner in which rates shall be fixed under section 6, including the constitution and functions of a Board to advise the Central Government in respect of such rates;
- (c) the matters regarding which information may be required to be furnished under section 7.

¹ Subs. by s. 2 of the Control of Shipping (Amendment) Act, 1948 (27 of 1948) for "the Provinces" which had been subs. for "British India" by the A.O. 1948.

² For such rules, see Gazette of India, 1947, Pt. I, p. 624 and *ibid*, 1948, Pt. I, p. 495.

(i) shares, stocks and bonds;

(ii) debentures;

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instruments of

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2. Definitions and interpretation.---(1)
In this Act, unless context otherwise requires

(a) "company" means a company as defined in section 3 of the Companies Act, 1956 and includes a foreign company within the meaning of section 591 of that Act;

(b) "issue of capital" means the issue in or creation of any securities whether for cash or otherwise and includes the capitalisation of profits or reserves for the purpose of converting partly paid-up shares into fully paid-up shares or increasing the par value of shares already issued;

(c) "private company" means a private company defined in section 3 of the Companies Act, 1956;

(d) "prospectus" means any prospectus, notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a company;

(e) "securities" means any of the following instruments issued or to be issued, or created or to be created, by or for the benefit of a company, namely:—

coming available for the subscription or purchase by persons other than those receiving the offer, or otherwise as being a domestic concern of the persons making or receiving it.

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(iv) instruments acknowledging loan to or indebtedness of the company and guaranteed by a third party or entered into jointly with a third party.

(1) 'states' means the territories comprised within the states to which this Act extends

Control over issues of capital.

3. (1) No company incorporated in ³[the Provinces] shall, except with the consent of the Central Government, make an issue of capital outside ³[the Provinces].

(2) No company, whether incorporated in ³[the Provinces] or not, shall except with the consent of the Central Government,—

(a) make an issue of capital in ³[the Provinces];

(b) make in ³[the Provinces] any public offer of securities for sale;

¹ For Statement of Objects and Reasons, see Gazette of India, 1947, Pt. V., p. 287; for Report of Select Committee, see *ibid*, p. 367.

² Subs. by the A.O. 1949 for "the whole of British India".

³ Subs. by the A.O. 1949 for "British India".

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Definitions.

States

3(1) The Central Government may by order at any time--

(a) Revoke the consent or recognition accorded under any of the provisions of this section; or

(b) Where such consent or recognition has been qualified with any conditions, vary all or any of those conditions:

Provided that before an order under this sub-section is made, the company concerned shall be given a reasonable opportunity of showing cause why such order should not be made.

(7) Where an order has been made under sub-section (6), the Central Government shall, upon the request of the company concerned, communicate to it in writing the reasons for such order."

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in [the Provinces] or elsewhere unless the consent or recognition of the Central Government has been accorded to such issue of capital.

(2) No person shall sell or purchase or otherwise transfer or accept transfer of any securities issued by a company in respect of any issue of capital made after the 17th day of May 1943 in [the Provinces] or elsewhere unless such issue has been made with the consent or recognition of the Central Government.

6. (1) The Central Government may, by general order which shall be notified in the official Gazette, provide for the granting of exemption from all or any of the provisions of sections 3, 4 and 5.

(2) The Central Government may by order condone a contravention of any of the provisions of section 3 or section 4, and on the making of such order the provisions of this Act, shall have effect as if an exemption had been granted under sub-section (1) of this section in respect of the thing done or omitted to be done in contravention of section 3 or section 4, as the case may be.

or section 5

¹ Subs. by the A.O. 1948 for "British India".

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information to any other person except with the permission of the Central Government.

Power to
delegate
function.

10. The Central Government may by order direct that any power or duty which by or under any of the preceding provisions of this Act is conferred or imposed upon the Central Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer subordinate to that Government.

Committee
to advise
Govern-
ment.

11. The
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Power to
make rules.
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12. The
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Penalties.

13. (1) Whoever contravenes, or attempts to contravene, the provisions of this Act or of any order made thereunder shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

(2) If the person committing an offence punishable under this section is a company or other body corporate, every director, manager, secretary or other officer thereof shall, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent its commission, be deemed to be guilty of such offence.

Burden of
proof in
certain
cases.

14. Where any person is prosecuted for contravening any provision of this Act or of any order made thereunder which prohibits him from doing an act without the consent or permission of any authority the

"7. Power to call for information.* Any officer authorised in this behalf by the Central Government may, for the purpose of inquiring into the correctness of any statement made in an application for consent or recognition to an issue of capital or for the purpose of ascertaining whether or not the requirements of any condition attached to an order according such consent or recognition have been complied with or for the purpose of obtaining particulars as to the total capital issued or for any other purposes of this Act, require any company or any officer of a company to submit and furnish to him within such time as may be specified in the requisition, such accounts, books or other documents and such information as he may reasonably think necessary."

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12(2) All rules made under this section shall be laid for not less than thirty days before each House of Parliament as soon as possible after they are made and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following."

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*For such an Order, see Gazette of India, 1947, Extraordinary, p. 385.

burden of proving that he had the requisite consent or permission shall be on him.

15. No suit, prosecution or other legal proceedings shall lie against any person for anything in good faith done or intended to be done under this Act or any rule or order made thereunder.

Protection of action taken under Act.

V of 1947. 16. (1) All orders made or deemed to be made under the provisions of the Capital Issues (Continuance of Control) Ordinance, 1947, and in force immediately before the commencement of this Act shall continue to be in force and be deemed to be orders made under the corresponding provisions of this Act.

Continuance of existing orders and savings.

X of 1947. (2) Section 6 of the General Clauses Act, 1897, shall apply upon the expiration of the said Ordinance as if it had then been repealed by this Act.

THE TAXATION ON INCOME (INVESTIGATION COMMISSION) ACT, 1947.

¹Act No. XXX of 1947.

[18th April, 1947.]

An Act to provide for an investigation into matters relating to taxation on income.

WHEREAS it is expedient, for the purpose of ascertaining whether the actual incidence of taxation on income is and has been in recent years in accordance with the provisions of law, and the extent to which the existing law and procedure for the assessment and recovery of such taxation is adequate to prevent the evasion thereof, to make provision for an investigation to be made into such matters;

It is hereby enacted as follows:—

1. (1) This Act may be called the Taxation on Income (Investigation Commission) Act, 1947.

Short title, extent and commencement.

(2) It extends to ^{Whole} [all the Provinces of India] ^{Jammu & Kashmir} except the State of

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(3) It shall come into force on such ³date as the Central Government may, by notification in the official Gazette, appoint.

XI of 1922, XV of 1940. 2. In this Act, "taxation on income" means any tax chargeable under the Indian Income-tax Act, 1922 or the Excess Profits Tax Act, 1940.

Interpretation.

3. The Central Government may constitute a Commission to be called the Income-tax Investigation Commission (hereinafter referred to as the Commission) whose duties it shall be—

Constitution and functions of Commission.

¹ For Statement of Objects and Reasons, see Gazette of India, 1947, Pt. V. p. 215

² Subs. by the A.O. 1948 for "the whole of British India".

³ 1st May, 1947, see Gazette of India, 1947, Pt. I, p. 578.

- (a) to investigate and report to the Central Government on all matters relating to taxation on income, with particular reference to the extent to which the existing law relating to, and procedure for, the assessment and collection of such taxation is adequate to prevent the evasion thereof;
- (b) to investigate in accordance with the provisions of this Act any case referred to it under section 5 and report thereon to the Central Government. *in respect of all or any of the es made in relation to the case before the date of its report or interim report*

Composi-
tion of
Commis-
sion.

4. (1) The Commission shall consist of a Chairman (being a person who is or has been a Judge of a High Court) and two other Commissioners, appointed by the Central Government.

(2) On the occurrence from any cause of a vacancy among the Commissioners, the Central Government may, if it thinks fit, appoint a

from time to time and when the Central Govt. if
at any time extends the term of appointment
of the Commission, it shall cause a copy of *ance,*
the order or extension to be laid before *y(ex-*
Parliament as soon as may be after it made. *arch,*

XI/51.

Com-

Power of
Central
Govern-
ment to
refer cases
for investi-
gation.

²[5. (1) The Central Government may at any time before the ³[30th day of June 1948] refer to the Commission for investigation and report any case or points in a case in which the Central Government has *prima facie* reasons for believing that a person has to a substantial extent evaded payment of taxation on income, together with such material as may be available in support of such belief, and may at any time before the ³[30th day of June 1948] apply to the Commission for the withdrawal of any case or points in a case thus referred, and if the Commission approves of the withdrawal, no further proceedings shall thereafter be taken by or before the Commission in respect of the case or points so withdrawn.

(2) The Commission may, after examining the material submitted by the Central Government with reference to any case or points in a case and making such investigation as it considers necessary, report to the Central Government that in its opinion further investigation is not likely to reveal any substantial evasion of taxation on income and on such report being made the investigation shall be deemed to be closed.

(3) No reference made by the Central Government under sub-section (1), at any time before the ³[30th day of June, 1948] shall be called in question, nor shall the sufficiency of the material on which such a reference has been made be investigated in any manner by any Court.

¹ Ins. by s. 2 of the Taxation on Income (Investigation Commission) (Amendment) Act, 1948 (23 of 1948).

² Subs. by a 3, *ibid*, for the original section.

³ Temporarily amended to read "1st day of September, 1948" by Ordinance 15 of 1948.

(4) If in the course of investigation into any case or points in a case referred to it under sub-section (1), the Commission has reason to believe—

6(1) The Commission shall have power to require any person or banking or other company to prepare and furnish on or before a specified date written statement of accounts and affairs verified in such manner as may be prescribed by the Commission and, if so required by the Commission, also duly verified by a qualified auditor, giving information on such points or matters as in the opinion of the Commission may, directly or indirectly, be useful for, or be relevant to, any case referred to it, and any person or banking or other company so required shall be bound, notwithstanding any law to the contrary, to comply with such requirement."

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procedure, 1900, for the purpose of securing the attendance of witnesses and of persons whose cases are being investigated.

"(2-A) For the purpose of any investigation, the Commission may impound and retain in its custody, for such period as it thinks fit, any document produced before it.;"

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in that behalf, subject to such directions as may be issued by the Commission from time to time, and the authorised official shall examine the accounts or documents, interrogate the person or obtain the statements from the person:

Provided that the authorised official shall in the discharge of his duties be entitled to employ such ministerial and subordinate executive staff as he may consider necessary.

(4) The authorised official shall subject to the direction of the Commission have the same powers as the Commission under sub-sections (1) and (2), and any person having charge or custody of accounts or documents required to be examined shall notwithstanding anything in any law to the contrary be bound to produce them to the authorised official and to give to such official any information in respect thereof which he may require; and any person interrogated by the authorised official or called upon by him to make or prepare a statement or furnish infor-

¹ Subs. by s. 4 of the Taxation on Income (Investigation Commission (Amendment) Act, 1948 (23 of 1948), for the original section.

mation shall notwithstanding anything in any law to the contrary be bound to comply with his directions and answer all questions relating to the case put to him by such official.

(5) If any person whose case or the points in whose case is or are being investigated by the Commission refuses or fails to attend in person in compliance with a notice in that behalf duly served upon him or to give any evidence or to answer questions or to produce documents or to prepare and furnish statements when called upon to do so, the Commission may, if satisfied that the refusal or failure was wilful, close the investigation of the case and proceed to draw up its report on the case or on the points to the best of its judgment and may in its discretion also direct that such sum as it may specify in the direction shall be recovered from the person by way of penalty for the refusal or failure, without prejudice to any penalty under the Indian Income-tax Act, 1922, and thereupon the sum so specified shall be recoverable as if the direction were given under sub-section (1) of section 46 of the Indian Income-tax Act, 1922.

XI of 1922.

XI of 1922

“(7) Where in the opinion of the Commission any person or banking or other company is likely to be in possession of any information or document which may directly or indirectly, be useful for, or relevant to any case referred to it or any case likely to be reported by the Commission to the Central Govt. under the provisions of sub-section (4) of section 35, the Commission, subject to the direction of the Commission, may—

“(9) Subject to any rules made in this behalf under this Act, any authorised official shall have power—

(i) to examine at all reasonable times any books of account or other documents which in his opinion will be useful for or relevant to the proceedings in any case under this Act;

(ii) if specially authorised in this behalf by the Commission, to enter any building or place where he has reason to believe that any such books of account or documents may be found;

(iii) to seize any such books of account or documents or place marks of identification thereon and make extracts or copies therefrom;

(iv) in the course of any search under this section, to make a note or an inventory of any other article or thing found in the course of such search which in his opinion may be useful for or relevant to the disposal of any case under this Act; and the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), relating to searches, so far as can be made applicable shall apply to searches made under the authority of this section.”

(10) The Commissioners and all authorised officials shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code and the Commission shall be deemed to be a civil Court

6-A. Power of Commission to tender immunity from prosecution, etc. (1) At any stage of the

of the investigation into a case referred to it under section 5, the Commission may, with a view to obtaining the evidence of any person appearing to have been, directly or indirectly, concerned in or privy to the evasion of payment of taxation on income in such case and after recording its reasons for so doing, tender to such person immunity from prosecution for any offence under the Indian Income-tax Act, 1922 (XI of 1922), the Indian Penal Code (Act XLV of 1860) or any other law for the time being in force and also from the imposition of any penalty under the Indian Income-tax Act, 1922, on condition of his making a full and true disclosure of the whole of the circumstances relative to the evasion of payment of taxation on income and to every other person concerned, whether as principal agent of abettor, in such evasion.

(2) Nothing contained in sub-sec.(1) shall render any person immune from liability to taxation on so much of his income as may be found to have been concealed or to have escaped taxation.

(3) Every person accepting a tender of immunity under this section shall be examined as a witness before the Commission.

6-B. Withdrawal of tender of immunity in certain cases. (1) If at any time after the tender of immunity under section 6-A it appears to the Commission that any person who accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, the Commission may record a finding to that effect, and thereupon the immunity shall be deemed to be withdrawn, and any such person may be tried for the offence in respect of which the tender of immunity was made or for any other offence of which he appears to have been guilty in connection with the same matter and shall also become liable to the imposition of any penalty under the Indian Income-tax Act, 1922 (XI of 1922), to which he would otherwise have been liable.

(2) If no such finding as is referred to in sub-sec.(1) is recorded by the Commission the person to whom a tender of immunity has been made and has been accepted by him shall

Procedure
of Commission.

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Govern-
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(amendment)

(a) no suit, prosecution or other legal proceeding shall be instituted against any person in any civil or criminal Court for any evidence given or produced by him in any proceedings before the Commission, and

(b) no evidence so given or produced shall be admissible in evidence against such person in any suit, prosecution or other proceeding before such Court,

except with the previous sanction of the Central Government.

(6) In any proceedings under this Act, the Commission may, in its discretion, admit in evidence and act upon any document notwithstanding that it is not duly stamped or registered.

(7) Nothing in sub-section (1) of section 54 of the Indian Income-tax Act, 1922 or of that section as applied to excess profits tax by section 21 of the Excess Profits Tax Act, 1940 shall apply to the disclosure of any of the particulars referred to therein in any proceeding before the Commission or in any report made by the Commission to the Central Government or in any report made to the Commission by an authorised official].

XI of 19
XV of 19

Power to
direct re-
opening of
assessment
proceed-
ings.

[8. (1) Save as otherwise provided in this Act, the materials brought on record shall be considered by all the three members of the Commission sitting together and the report of the Commission shall be in accordance with the opinion of the majority.

(2) After considering the report, the Central Government shall by order in writing direct that such proceedings as it thinks fit under the Indian Income-tax Act, 1922, the Excess Profits Tax Act, 1940 or any other law, shall be taken against the person to whose case the report relates in respect of the income of any period commencing after the 31st day of December 1938; and, upon such a direction being given, such proceedings may be taken and completed under the appropriate law notwithstanding the restrictions contained in section 34 of the Indian Income-tax Act, 1922, or section 15 of the Excess Profits Tax Act, 1940, or any other law and notwithstanding any lapse of time or any decision to a different effect given in the case by any Income-tax authority or Income-tax Appellate Tribunal.

XI of 1922.
XV of 1940.

(3) On a direction being given under sub-section (2), and not otherwise, a copy of the report of the Commission, so far as it relates to the case of the person concerned, shall be furnished to him.

(4) In all assessment or reassessment proceedings taken in pursuance of a direction under sub-section (2), the findings recorded by the Commission on the case or on the points referred to it shall, subject to the provisions of sub-sections (5) and (6), be final; but no proceedings taken in pursuance of such direction shall be a bar to the initiation of proceedings under section 34 of the Indian Income-tax Act, 1922.

XI of 1922

(5) In respect of any order made in the course of proceedings taken in pursuance of a direction issued under sub-section (2), the provisions

¹ Subs. by s. 6 of the Taxation on Income (Investigation Commission) (Amendment) Act, 1948 (23 of 1948), for the original section.

XI of 1922. of sections 30, 31, 33 and 33A of the Indian Income-tax Act, 1922 and
 XV of 1940. the corresponding provisions of the Excess Profits Tax Act, 1940 shall
 not apply so far as matters declared final by sub-section (4) are con-
 cerned; but the person concerned may, within 60 days of the date upon
 which he is served with a copy of such order, by application in the
 prescribed form accompanied by a fee of Rs. 100, require the appro-
 priate Commissioner of Income-tax to refer to the High Court any ques-
 tion of law arising out of such order, and thereupon the provisions of
 XI of 1922. sections 66 and 66A of the Indian Income-tax Act, 1922 shall as far
 as may be apply, with the modification that the reference shall be
 heard by a Bench of not less than three Judges of the High Court.

(6) Notwithstanding anything contained in this section, the Com-
 mission shall have power, either of its own motion or on the applica-
 tion of any person concerned or of the Central Government, to correct

***8-A. Section of cases under investiga-**
tion.- (1) Where any person concerned in any case referred to or pending before the Commission for investigation applies to the Commission at any time during such investigation to have the case or any part thereof settled in so far as it relates to him the Commission shall, if it is of opinion that the terms of the settlement contained in the application may be approved, refer the matter to the Central Govt. and if the Central Govt. accepts the terms of such settlement, the Commission shall have the terms thereof recorded and thereupon the investigation, in so far as it relates to matters covered by such settlement, shall be deemed to be closed.

(2) For the purpose of enforcing the terms of any settlement arrived at in pursuance of sub-section (1), the Central Government may direct that such proceedings as may be appropriate under the Indian Income-tax Act, 1922 (XI of 1922), the Excess Profits Tax Act, 1940 (XV of 1940) or any other law may be taken against the person to whom the settlement relates, and in particular the provisions of the second proviso to clause (a) of sub-section (5) of section 23, section 24-B, the proviso to sub-section (2) of section 25-A, the proviso to sub-section (2) of section 26 and sections 44 and 46 of the Indian Income-tax Act, 1922 shall be applicable to the recovery of any sum specified in such settlement by the Income-tax officer having jurisdiction to assess the person by whom such sum is payable as if it were income-tax or an arrear income-tax within the meaning of those provisions.

Bar of jurisdiction.

Power to make rules,

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THE ANTIQUITIES (EXPORT CONTROL) ACT, 1947.

¹Act No. XXXI of 1947.

[18th April, 1947.]

An Act to control the export of antiquities.

WHEREAS it is expedient to make better provision for controlling the export of objects of antiquarian or historical interest or significance;

It is hereby enacted as follows :—

Short title
and extent, 1947.

1. (1) This Act may be called the Antiquities (Export Control) Act,

62/56

(2) It extends to² ~~all the Provinces~~ ^{the whole} of India.]

Interpre-
tation.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “antiquity” includes—

(i) any coin, sculpture, manuscript, epigraph, or other work of art or craftsmanship,

(ii) any article, object or thing detached from a building or cave,

(iii) any article, object or thing illustrative of science, art, crafts, literature, religion, customs, morals or politics in bygone ages.

(iv) any article, object or thing declared by the Central Government by notification in the official Gazette to be an antiquity for the purposes of this Act,—

which has been in existence for not less than one hundred years;

(b) “export” means export from ^{India} ~~the Provinces~~ by sea, land or air.

Prohibition
of
export.

3. No person shall export any antiquity except under the authority of a licence granted by the Central Government.

Applica-
tion of
Act VIII of
1878.

4. All antiquities the export of which is prohibited under section 3 shall be deemed to be goods of which the export has been prohibited under section 19 of the Sea Customs Act, 1878, and all the provisions of that Act shall have effect accordingly, except that, the provisions of section 183 of that Act notwithstanding, any confiscation authorised under that Act shall be made, unless the Central Government, on application to it in such behalf, otherwise directs.

Penalty and
procedure.

5. (1) If any person exports or attempts to export an antiquity in contravention of section 3, he shall, without prejudice to any confisca-

¹ For Statement of Objects and Reasons, see Gazette of India, 1947, Pt. V. 572.

² Subs. by the A.O. 1948 for “the whole of British India”.

³ Subs. by the A.O. 1948 for “British India”.

VIII of
1878.

tion or penalty to which he may be liable under the provisions of the Sea Customs Act, 1878 as applied by section 4, be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both.

(2) No Court shall take cognizance of an offence punishable under this section except upon complaint in writing made by an officer generally or specially authorised in this behalf by the Central Government, and no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any such offence.

6. If any question arises whether any article, object or thing is or is not an antiquity for the purposes of this Act, it shall be referred to the Director General of Archaeology in India, and his decision thereon shall be final.

Power to determine whether or not an article is an antiquity.

7. (1) The Central Government may, by notification in the official Gazette, make rules to carry out the purposes of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe the procedure for granting licences for the export of antiquities, and fix the fees payable on applications therefor.

8. No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under this Act.

Protection of action taken under this Act.

VII of 1904. 9. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Ancient Monuments Preservation Act, 1904 or any other law for the time being in force.

Application of other laws not barred.

THE COAL MINES LABOUR WELFARE FUND ACT, 1947.

²Act No. XXXII of 1947.

[18th April, 1947.]

An Act to make better provision for financing measures for promoting the welfare of labour employed in the coal-mining industry.

WHEREAS it is expedient to make better provision for financing measures for promoting the welfare of labour employed in the coal-mining industry, including housing and the provision of dispensary services, and for such purposes to impose a cess and constitute a fund;

It is hereby enacted as follows :—

¹For the Antiquities (Export Control) Rules, 1947, see Gazette of India, 1947, Pt. I, p. 862.

²For Statement of Objects and Reasons, see Gazette of India, 1947, Pt. V, p. 317.

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Coal Mines Labour Welfare Fund Act, 1947.

(2) It extends to ^{whole} ~~all the~~ ^{Jammu & Kashmir} ~~Provinces~~ of India.] ~~except the State of~~

(3) It shall come into force on such ²date as the Central Government may, by notification in the official Gazette, appoint.

Interpreta-
tion.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “Advisory Committee” means the Advisory Committee constituted under section 8;

(b) “Commissioner” means the Coal Mines Labour Welfare Commissioner appointed under section 9, and includes any officer authorised in writing by the Commissioner to exercise any of his functions under this Act;

(c) “Housing Board” means the Coal Mines Labour Housing Board constituted under section 6;

(d) “Fund” means the Coal Mines Labour Housing and General Welfare Fund constituted under section 4;

• (e) “prescribed” means prescribed by rules made under this Act.

Imposition
and collec-
tion of
duty.

3. (1) There shall be levied and collected as a cess for the purposes of this Act a duty of excise on all coal and coke despatched from collieries in ~~the~~ ³Provinces, at such rate not less than four annas and not more than eight annas per ton, as may from time to time be fixed by the Central Government by ⁴notification in the official Gazette:

Provided that the Central Government may, by notification in the official Gazette, exempt from liability to the duty any specified class or classes of coal or coke.

(2) The duty levied under sub-section (1) shall, subject to and in accordance with rules made in this behalf, be collected by such agencies and in such manner as may be prescribed.

Coal Mines
Labour
Housing
and General
Welfare
Fund.

4. (1) The proceeds of the duty levied under section 3 shall be paid by the collecting agencies into the Reserve Bank of India at Calcutta in the prescribed manner, and shall be credited to a fund to be called the Coal Mines Labour Housing and General Welfare Fund, and apportioned under two separate accounts, to be called the housing account of the Fund and the general welfare account of the Fund, in such manner as the Central Government from time to time may, by notification in the official Gazette, determine:

Provided that there shall at all times be credited—

¹ Subs. by the A.O. 1948 for “the whole of British India”.

² 14th June, 1947, see Gazette of India, 1947, Pt. I, p. 838.

³ Subs. by the A.O. 1948 for “British India”.

⁴ For such notifications see Gazette of India, 1944, Pt. I, p. 1401 and *ibid*, 1947, Pt. I, p. 888.

⁵ For such notification, see Gazette of India, 1947, Pt. I, p. 1250.

(a) to the housing account of the Fund, not less than one anna and four pies, and

(b) to the general welfare account of the Fund, not more than four annas and eight pies,—

out of the duty collected under this Act on every ton of coal or coke.

(2) There shall also be credited to the housing account of the Fund—

(a) any grants made thereto by the Central Government;

(b) rents, if any, realised from housing accommodation constructed out of such account;

(c) any other moneys received by the Housing Board.

5. (1) The cost of administering the Fund and the salaries and allowances, if any, of the Commissioner, Inspectors, Welfare Officers and other staff appointed to supervise or carry out measures financed from the Fund shall be defrayed out of the Fund, and shall be apportioned between and debited to the housing account and the general welfare account in such manner as may be prescribed.

Expenditure from the Fund.

(2) The Central Government may out of the general welfare account of the Fund pay annually grants-in-aid to such of the colliery owners as maintain to the satisfaction of the Commissioner dispensary services of the prescribed standard for the benefit of labour employed in their collieries, so however that the amount payable as grant-in-aid to the owner of a colliery shall not exceed—

(i) the amount of the duty at the rate of eight pies per ton recovered in respect of coal or coke despatched from the colliery less the proportionate cost of recovery, or

(ii) the amount spent by the owner of the colliery in the maintenance of the dispensary service, as determined by the Commissioner,

whichever is less :

Provided that no grant-in-aid shall be payable in respect of any dispensary service maintained by the owner of the colliery if the amount expended thereon, as determined by the Commissioner, is less than eighty rupees per mensem.

(3) The balance of the moneys in the general welfare account of the Fund shall be applied by the Central Government to meet expenditure incurred in connection with measures which are in the opinion of the Central Government necessary or expedient to promote the welfare of labour employed in the coal-mining industry.

(4) Without prejudice to the generality of sub-section (3) the moneys in the general welfare account of the Fund may be utilised to defray—

(a) the cost of measures for the benefit of labour employed in the coal-mining industry directed towards—

(i) the improvement of public health and sanitation, the prevention of disease, the provision of medical facilities and the improvement of existing medical facilities, including the provision and maintenance of dispensary services in collieries the owners of which do not receive grants-in-aid under sub-section (2),

(ii) the provision of water-supplies, and facilities for washing and the improvement of existing supplies and facilities,

(iii) the provision and improvement of educational facilities,

(iv) the improvement of standards of living, including nutrition, amelioration of social conditions, and the provision of recreational facilities,

(v) the provision of transport to and from work;

(b) the grant to a Provincial Government, a local authority or the owner, agent or manager of a coal mine of money in aid of any scheme approved by the Central Government for any purpose for which moneys in the general welfare account of the Fund may be utilised;

(c) the allowances, if any, of the members of the Advisory Committee and the amounts debitable to the account under sub-section (1);

(d) any other expenditure which the Central Government directs to be defrayed out of the moneys in the general welfare account of the Fund.

(5) The Central Government shall publish annually in the official Gazette an estimate of receipts into and expenditure from the general welfare account of the Fund together with a statement of the accounts and a report of the activities financed during the previous year from the general welfare account of the Fund, and shall forward copies of such statement and report to members of the Advisory Committee.

(6) The moneys in the housing account of the Fund shall be applied by the Housing Board to defray—

(a) the cost of erecting, maintaining and repairing housing accommodation for labour employed in the coal-mining industry and of providing services and facilities connected therewith;

(b) the cost of preparing schemes, and of acquiring any land required, for the purposes referred to in clause (a);

(c) the grant, subject to the previous approval of the Central Government, to a Provincial Government, a local authority or the owner, agent or manager of a coal mine of money in aid of any scheme approved by the Housing Board for the purposes referred to in clauses (a) and (b);

(d) the allowances, if any, of members of the Housing Board and the amounts debitable to the account under sub-section (1);

(e) any other expenditure which the Central Government directs to be defrayed out of the moneys in the housing account of the Fund.

(7) In February of each year the Housing Board shall submit to the Central Government a statement in the prescribed form of the estimated receipts into and expenditure from the housing account of the Fund for the ensuing financial year together with a report of the activities financed during the previous year from the housing account of the Fund, and may at any time during the ensuing financial year submit to the Central Government a supplementary statement and shall forward copies of such statements and report to members of the Advisory Committee.

(8) The Housing Board shall comply with such directions as the Central Government may from time to time think fit to give in respect of expenditure from the housing account of the Fund.

(9) The Housing Board may invest moneys in the housing account of the Fund in securities of the Government of India or, with the previous approval of the Central Government, in other securities.

(10) The Housing Board shall cause to be maintained such books of account as may be prescribed and shall prepare in the prescribed manner an annual statement of the accounts.

(11) The Housing Board shall cause the housing account of the Fund to be audited annually by a person qualified under the provisions of section 144 of the Indian Companies Act, 1913, to act as an auditor of companies, and as soon as the said account has been audited the Housing Board shall forward copies thereof together with copies of the report of the auditor thereon to the Central Government and to members of the Advisory Committee.

(12) The Central Government shall have power to decide whether

(1) The Central Government shall by notification in the Official Gazette, constitute a Coal Mines Labour Housing Board for the following purposes, namely:--

(a) to prepare and carry out, subject to the previous approval of the Central Government schemes financed before the housing account of the Fund for the provision of suitable housing accommodation for labour employed in the coal mining industry;

(b) to prepare plans and estimates for, and construct or carry out, such works of erection, maintenance and repair finance from the general welfare account of the Fund as the Central Govt. may, by general or special order, specify; and

(c) to carry out any other functions assigned to the Housing Board by or under this Act.

Coal Mines
Labour
Housing
Board,

ernment and shall be of such number and chosen in such manner as may be prescribed.

(3) The Housing Board shall be a body corporate by the name of the Coal Mines Labour Housing Board, having perpetual succession and a common seal, with power to acquire property both movable and immovable, and shall by the said name sue and be sued.

(4) No act done by the Housing Board shall be called in question on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Housing Board.

Provisions
regarding
housing
accommodation.

7. (1) The occupation by any person of any housing accommodation provided out of the housing account of the Fund shall be subject to compliance by that person at all times with such conditions relating to his occupation of such accommodation as may be prescribed.

(2) Before any person occupies any such accommodation he shall be furnished with a copy of the conditions referred to in sub-section (1), and if he so desires the said conditions shall be read over to him in a language which he understands; and the Housing Board shall cause to be published in such manner as it thinks best adapted for informing the persons concerned any changes which may from time to time be made in the said conditions.

(3) If, in the opinion of the Housing Board, any person in occupation of any such accommodation fails or ceases to comply with any of the conditions referred to in sub-section (1), it may, by notice in writing, require him to vacate the accommodation on or before such date, not being less than thirty days after the service of the notice, as may be specified in the notice; and the occupation of such accommodation by such person or any dependent of his after the date so specified shall be unlawful, and such person or dependent may be evicted accordingly by due process of law from such accommodation.

(4) There shall be payable in respect of the occupation of any such accommodation as aforesaid rent at such rate as may be prescribed :

Provided that the Housing Board may remit, subject to compliance at all times with the conditions referred to in sub-section (1), either the whole or any part of the prescribed rent :

Provided further that where, in the case of any person who is by virtue of a remission under the first proviso paying either no rent or a reduced rent, the Housing Board has reason to believe that such person has contravened any of the said conditions, it may by notice in writing require such person to pay, with effect on and after the expiry of seven days from the service of the notice, rent for the accommodation occupied by him at the full prescribed rate.

(5) All rent payable in respect of the occupation of such accommodation as aforesaid, whether at the full prescribed rate or at a lessor rate, shall be recoverable as an arrear of land revenue.

Advisory
Committee.

8. (1) The Central Government shall, by notification in the official Gazette, constitute an Advisory Committee, to advise on matters on which

the Central Government or the Housing Board is required by this Act to consult the Committee and on any other matters arising out of the administration of this Act which the Central Government may refer to it for advice.

(2) The members of the Advisory Committee shall be appointed by the Central Government and shall be of such number and chosen in such manner as may be prescribed :

Provided that the Advisory Committee shall include an equal number of members representing Government, the owners of coal mines and workmen employed in the coal-mining industry, and that at least one member of the Advisory Committee shall be a woman.

(3) The chairman of the Advisory Committee shall be an officer of the Central Government appointed by the Central Government.

9. (1) The Central Government may appoint a Coal Mines Labour Welfare Commissioner and such number of Inspectors, Welfare Officers and other staff as it thinks fit to supervise and carry out measures financed from the Fund. Appoint-
ment and
powers of
officers.

of (2) Any person so appointed shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

(3) The Commissioner or any Inspector or Welfare Officer may, with such assistance, if any, as he thinks fit, enter at all reasonable times any place which he considers it necessary to enter for the purpose of supervising or carrying out the measures financed from the Fund, and may do therein anything necessary for the proper discharge of his duties.

10. (1) The Central Government may, by notification in the official Gazette, and subject to the condition of previous publication, make rules to carry into effect the purposes of this Act. Power to
make rules.

(2) Without prejudice to the generality of the foregoing power, rules made under this section may provide for—

- (i) the manner in which the duty levied under sub-section (1) of section 3 shall be collected; the persons who shall be liable to make the payments, the making of refunds, remissions and recoveries, the deduction by collecting agencies of a percentage of the realizations to cover the cost of collection, and the procedure to be followed in remitting the proceeds to the Reserve Bank of India;
- (ii) the composition of the Housing Board, the manner in which its members shall be chosen, the term of office of its members, the allowances if any payable to them and the manner in which the Housing Board shall conduct its business, including the number of members necessary to form a quorum at a meeting thereof;
- (iii) the books of account to be maintained by the Housing Board, and the form of its financial estimates and statements of account;

- (iv) the composition of the Advisory Committee, the manner in which its members shall be chosen, the term of office of its members, the allowances if any payable to them and the manner in which the Advisory Committee shall conduct its business;
- (v) the apportionment between the housing account and the general welfare account of the Fund of the expenditure on the administration of the Fund and on the salaries and allowances of the Commissioner, Inspectors, Welfare Officers and other staff employed for the purposes of this Act;
- (vi) the standard of dispensary service to be provided by owners of collieries for the purposes of sub-section (2) of section 5, and the inspection and supervision of the dispensaries and other places at which such services are provided;
- (vii) the application by owners of collieries for grants-in-aid, the authority to whom and the manner in which such application shall be made and the particulars to be specified in such applications;
- (viii) the manner in which dispensary services may be provided by the Central Government;
- (ix) the conditions governing the grant of money from the general welfare account of the Fund to a Provincial Government, a local authority or the owner, agent or manager of a coal mine;
- (x) the rate of rent for housing accommodation provided out of the housing account of the Fund;
- (xi) the conditions of service and the duties of Inspectors, Welfare Officers and other officers appointed to supervise or carry out measures financed from the Fund;
- (xii) the duties and functions of the Commissioner;
- (xiii) the furnishing by owners, agents or managers of coal mines of statistical or other information, and the punishment by fine not exceeding two hundred rupees of failure to comply with the requirements of any rules made under this clause;
- (xiv) any other matter which under this Act is to be or may be prescribed.

Repeal of
Ord. VII
of 1944.

11. (1) The Coal Mines Labour Welfare Fund Ordinance, 1944, is hereby repealed.

(2) For the avoidance of doubts it is hereby declared that the provisions of section 6 of the General Clauses Act, 1897, shall apply to the repeal effected by this section. X of 1897

(3) Any balance remaining in the Fund constituted under the aforesaid Ordinance shall be credited to the Fund constituted under this Act, and shall be apportioned between the housing account and the general welfare account of such Fund in such manner as the Central Government may determine.

THE PRESS (SPECIAL POWERS) ACT, 1947.

¹Act XXXIX of 1947.

An Act to continue certain special powers conferred on the administration in Chief Commissioners' Provinces for the better control of the dissemination of undesirable matter.

WHEREAS it is expedient to continue certain powers conferred on the administration in Chief Commissioners' Provinces for the better control of the dissemination of undesirable matter;

It is hereby enacted as follows :—

1. (1) This Act may be called the Press (Special Powers) Act, 1947. Short title and extent

(2) It extends to all Chief Commissioners' Provinces.

(3) This Act shall cease to have effect after the 31st December, 1949.

2. In this Act unless there is anything repugnant in the subject or context, "document" includes gramophone records, sound tracks and any other articles on which sounds have been recorded with a view to their subsequent reproduction. Interpretation.

3. (1) The Provincial Government may by order direct that any power which is conferred on it by this Act shall in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised by a District Magistrate or Additional District Magistrate. Delegation of powers

(2) The powers of the Provincial Government under this Act shall be exercisable also by the Chief Commissioner.

4. The Provincial Government may by order in writing address to a printer, publisher or editor or generally to all printers, publishers or editors or to such class of printers, publishers or editors as may be specified therein— Power to control publications.

(a) prohibit or regulate the printing or publication in any document or class of documents either absolutely or for a specified period, or in a particular issue or issues of a newspaper or periodical, of any matter which tends directly or indirectly to promote feelings of enmity or hatred between different classes of His Majesty's subjects;

(b) require that any document, or class of documents, or any matter relating to a particular subject or class of subjects, shall before publication be submitted for scrutiny to a specified officer, who may after such scrutiny, if he is satisfied that such document, class of document or matter or any portion thereof is or contains matter of the nature

¹ For Statement of Objects and Reasons, see Gazette of India, 1947, Pt. V, p. 82

describe in clause (a), either prohibit its publication or pass it for publication with such modifications as he may deem necessary.

Control of documents printed outside the Province.

5. The Provincial Government may, by general or special order, prohibit or regulate the entry into, or sale or distribution or circulation or publication or possession within, the Province of any document or class or documents, or of any matter of the nature described in clause (a) of section 4, printed or made outside the Province.

Forfeiture of books, newspapers or other documents.

6. Where in its opinion any newspaper, book or other document, wherever made, contains any matter of the nature described in clause (a) of section 4, the Provincial Government may, by notification in the official Gazette, declare every copy of the issue of such newspaper, or of such book or other document to be forfeited to His Majesty, and thereupon any police officer may seize such copies wherever found, and any Magistrate may by warrant authorise any police officer not below the rank of Sub-Inspector to enter upon and search for such copies in any premises where any such copy may be or may be reasonably expected to be.

Prevention of publication of unauthorised matter.

7. Where the Provincial Government has reason to believe that a newspaper, book or other document is likely to be published, printed or made, containing matter of the nature described in clause (a) of section 4, it may, by order in writing, prohibit the printing or publication of such newspaper, book or document, or allow the publication, printing or making of the newspaper, book or document, subject to the publisher, printer, or editor, as the case may be, giving an undertaking in writing that he will not publish any such matter.

Dissemination of prohibited documents or matter.

8. (1) Whoever circulates or distributes in any manner any document or thing advocating or calculated to further any activity which tends directly or indirectly to promote feelings of enmity or hatred among different classes of His Majesty's subjects, or in respect of which an order of forfeiture under section 6 is in force shall, unless he proves that he was unaware of the nature of the document or thing, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(2) Whoever allows his name or address to be used to facilitate transmission through the post or otherwise to any person other than the person for whom it purports to be intended of any document or thing of the nature referred to in sub-section (1) shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(3) Whoever publishes, circulates or repeats in public any matter contained in any newspaper, book or other document in respect of which any order of forfeiture or prohibition has been made under this Act shall be punishable with imprisonment for a term which may extend to three years or with fine, or with both.

Powers in respect of contravention of orders.

9. Where in the opinion of the Provincial Government any person has contravened an order under section 4, section 5 or section 7 or an undertaking given by him under section 7, the Provincial Government may, without prejudice to any other penalty to which such person may

be liable, by order prohibit, either absolutely or for a specified period, the publication by him or on his behalf of any newspaper, periodical, leaflet or other document, and may order the seizure of all copies of the publication in respect of which the contravention has occurred and of any printing-press or other instrument or apparatus used in the production of the publication; and the Provincial Government may by order declare forfeited to His Majesty any article so seized.

10. Whoever—

Penalties.

- (a) contravenes any provision of this Act or of any order made thereunder or any direction or undertaking given or condition imposed under this Act, or
- (b) interferes with or obstructs the compliance with such provision, order, direction, undertaking or condition by the person concerned, or
- (c) obstructs the lawful exercise of any power conferred by or under this Act;

shall, if no express provision is made by this Act for the punishment of such contravention or interference or obstruction, be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

11. Whoever attempts to commit, or abets, or attempts to abet, or does any act preparatory to the commission of, any offence punishable under this Act shall be deemed to have committed that offence.

Attempt and abetment.

V of 1898.

12. (1) The power to issue search warrants conferred by section 98 of the Code of Criminal Procedure, 1898, shall be deemed to include a power to issue warrants authorising—

Search.

- (a) the search of any place in which any Magistrate mentioned in that section has reason to believe that any offence punishable under this Act has been, is being or is about to be committed or that preparation for the commission of any such offence is being made;
- (b) the seizure in or on any place searched under clause (a) of anything which the officer executing the warrant has reason to believe is being or has been or is intended to be used for any purpose mentioned in that clause.

(2) Any police officer authorised by general or special order in writing of the District Magistrate or of the Superintendent of Police may search or cause to be searched any person whom he has reason to believe or suspects to be in possession of or carrying any document or other thing the possession, circulation or distribution of which is punishable under this Act, and may seize and detain any such document or thing found on such person.

(3) The provisions of the said Code shall, so far as may be, apply to searches made, and to the disposal of any property seized, under this section.

V of 1898.

13. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, any offence punishable under this Act shall be cognizable.

Offences to be cognizable,

Jurisdiction
barred.

14. Every declaration of forfeiture purporting to be made under this Act shall, as against all persons, be conclusive evidence that the forfeiture therein referred to has taken place, and no proceeding or order purporting to be taken or made under this Act shall be called in question by any Court, and no civil or criminal proceeding shall be instituted against any person for anything done or in good faith intended to be done under this Act or against any person for any loss or damage caused to or in respect of any property whereof possession has been taken under this Act.

Effect of
orders, etc.,
inconsistent
with other
laws.

15. Any order made, and any other action taken, under this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in any instrument having effect by virtue of any other law.

Amend-
ment of
Act XXIII
of 1931.

16. In its application to the Chief Commissioners' Provinces, the Indian Press (Emergency Powers) Act, 1931, shall have effect as if in sub-section (1) of section 4 thereof, after clause (b), the following word and clause had been inserted, namely:—

“or

(bb) are calculated to instigate the commission of, or the publication of which constitutes, an offence punishable under the Press (Special Powers) Act, 1947.”

Repeal of
Ordinance
X of 1947.

17. The Press (Special Powers) (No. 2) Ordinance, 1947, is hereby repealed.

THE UNITED NATIONS (SECURITY COUNCIL) ACT, 1947.

¹Act No. XLIII of 1947.

An Act to enable effect to be given to certain provisions of the Charter of the United Nations.

WHEREAS it is expedient to enable effect to be given to certain provisions of the Charter of the United Nations;

It is hereby enacted as follows:—

Short title.

1. This Act may be called the United Nations (Security Council) Act, 1947.

Measures
under Art.
41 of the
Charter of
the United
Nations.

2. If, under Article 41 of the Charter of the United Nations signed at San Francisco on the 26th day of June 1945 the Security Council of the United Nations calls upon the Central Government to apply any measures, not involving the use of armed force, to give effect to any decision of that Council, the Central Government may, by order published in the official Gazette, make such provisions (including provisions having extra-territorial operation) as appear to it necessary or expedient for enabling those measures to be effectively applied, and without prejudice to the generality of the foregoing power, provision may be made for the punishment of persons offending against the order.

¹For Statement of Objects and Reasons, see Gazette of India, 1947, Pt. V, p. 271.

THE UNITED NATIONS (PRIVILEGES AND IMMUNITIES) ACT, 1947.

¹Act No. XLVI of 1947.

An Act to give effect to the Convention on the Privileges and Immunities of the United Nations.

WHEREAS it is expedient to give effect to the Convention on the Privileges and Immunities of the United Nations, and to enable similar privileges and immunities to be enjoyed by other international organisations and their representatives and officials;

It is hereby enacted as follows:—

1. This Act may be called the United Nations (Privileges and Immunities) Act, 1947. Short title.

2. (1) Notwithstanding anything to the contrary contained in any other law, the provisions set out in the Schedule to this Act of the Convention on the Privileges and Immunities, adopted by the General Assembly of the United Nations on the 13th day of February 1946, shall have the force of law in India. Conferment on United Nations and its representatives and officers of certain privileges and immunities.

(2) The Central Government may, from time to time, by notification in the official Gazette, amend the Schedule in conformity with any amendments, duly made and adopted, of the provisions of the said Convention set out therein.

3. Where in pursuance of any international agreement, convention or other instrument it is necessary to accord to any international organisation and its representatives and officers privileges and immunities in India similar to those contained in the provisions set out in the Schedule, the Central Government may, by notification in the official Gazette, declare that the provisions set out in the Schedule shall, subject to such modifications, if any, as it may consider necessary or expedient for giving effect to the said agreement, convention or other instrument, apply *mutatis mutandis* to the international organisation specified in the notification and its representatives and officers, and thereupon the said provisions shall apply accordingly and, notwithstanding anything to the contrary contained in any other law, shall in such application have the force of law in India. Power to confer certain privileges and immunities on other international organisations and their representatives and officer.

4. The Central Government may make rules for carrying out the purposes of this Act. Power to make rules.

THE SCHEDULE.

(See sections 2 and 3).

ARTICLE I.

JURIDICAL PERSONALITY.

SECTION 1. The United Nations shall possess juridical personality.

It shall have the capacity:

- (a) to contract;
- (b) to acquire and dispose of immovable and movable property;
- (c) to institute legal proceedings.

¹For Statement of Objects and Reasons, see Gazette of India, 1947, Pt. V, p. 277.

ARTICLE II.

PROPERTY, FUNDS AND ASSETS.

SECTION 2. The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

SECTION 3. The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

SECTION 4. The archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located.

SECTION 5. Without being restricted by financial controls, regulations or moratoria of any kind.

- (a) the United Nations may hold funds, gold or currency of any kind and operate accounts in any currency;
- (b) the United Nations shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency.

SECTION 6. In exercising its rights under Section 5 above, the United Nations shall pay due regard to any representations made by the Government of any Member in so far as it is considered that effect can be given to such representations without detriment to the interests of the United Nations.

SECTION 7. The United Nations, its assets, income and other property shall be:

- (a) exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services;
- (b) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use. It is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country;
- (c) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

SECTION 8. While the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

ARTICLE III.

FACILITIES IN RESPECT OF COMMUNICATIONS.

SECTION 9. The United Nations shall enjoy in the territory of each Member for its official communications treatment not less favourable than that accorded by the Government of that Member to any other Government including its diplomatic mission in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications; and press rates for information to the press and radio. No censorship shall be applied to the official correspondence and other official communications of the United Nations.

SECTION 10. The United Nations shall have the right to use codes and to despatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

ARTICLE IV.

THE REPRESENTATIVES OF MEMBERS.

SECTION 11. Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities :

- (a) immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;
- (b) inviolability for all papers and documents;
- (c) the right to use codes and to receive papers or correspondence by courier or in sealed bags;
- (d) exemption in respect of themselves and their spouses from immigration restrictions, aliens registration or national service obligations in the state they are visiting or through which they are passing in the exercise of their functions;
- (e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

- (f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys; and also
- (g) such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

SECTION 12. In order to secure, for the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members.

SECTION 13. Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations are present in a state for the discharge of their duties shall not be considered as periods of residence.

SECTION 14. Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

SECTION 15. The provisions of Sections 11, 12 and 13 are not applicable as between a representative and the authorities of the state of which he is a national or of which he is or has been the representative.

SECTION 16. In this article the expression "representatives" shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

ARTICLE V.

OFFICIALS.

SECTION 17. The Secretary-General will specify the categories of officials to which the provisions of this Article and Article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Governments of Members.

SECTION 18. Officials of the United Nations shall :

- (a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
- (b) be exempt from taxation on the salaries and emoluments paid to them by the United Nations;
- (c) be immune from national service obligations;
- (d) be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;
- (e) be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;
- (f) be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;
- (g) have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

SECTION 19. In addition to the immunities and privileges specified in Section 18, the Secretary-General and all Assistant Secretaries-General shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

SECTION 20. Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.

SECTION 21. The United Nations shall co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

ARTICLE VI.

EXPERTS ON MISSIONS FOR THE UNITED NATIONS.

SECTION 22. Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, in-

cluding the time spent on journeys in connection with their missions. In particular they shall be accorded :

- (a) immunity from personal arrest or detention and from seizure of their personal baggage;
- (b) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;
- (c) inviolability for all papers and documents;
- (d) for the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;
- (e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
- (f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

SECTION 23. Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations.

ARTICLE VII.

UNITED NATIONS LAISSEZ-PASSER.

SECTION 24. The United Nations may issue United Nations laissez-passer to its officials. These laissez-passer shall be recognized and accepted as valid travel documents by the authorities of Members, taking into account the provisions of Section 25.

SECTION 25. Applications for visas (where required) from the holders of United Nations laissez-passer, when accompanied by a certificate that they are travelling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

SECTION 26. Similar facilities to those specified in section 25 shall be accorded to experts and other persons who, though not the holders of United Nations laissez-passer, have a certificate that they are travelling on the business of the United Nations.

SECTION 27. The Secretary-General, Assistant Secretaries-General and Directors travelling on United Nations laissez-passer on the business of the United Nations shall be granted the same facilities as are accorded to diplomatic envoys.

SECTION 28. The provisions of this article may be applied to the comparable officials of specialized agencies if the agreements for relationship made under Article 63 of the Charter so provide.

1947 : Act XLVI.] *The United Nations (Privileges and Immunities* 617

1947 : Act XLVII.] *The Extra-Provincial Jurisdiction.*

ARTICLE VIII.

SETTLEMENT OF DISPUTES.

SECTION 29. The United Nations shall make provisions for appropriate modes of settlement of:

(a) disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party;

(b) disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.

SECTION 30. All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties.

THE EXTRA-PROVINCIAL JURISDICTION ACT, 1947.

¹Act XLVII of 1947.

[24th December, 1941.]

An Act to provide for the exercise of certain ~~extra-provincial~~ foreign jurisdiction of the Central Government.

WHEREAS by treaty, agreement, grant, usage, sufferance and other lawful means, the Central Government has, and may hereafter acquire, jurisdiction in and in relation to areas outside the Provinces of India;

It is hereby enacted as follows:—

1. This Act may be called the ~~Extra-Provincial~~ ^{Foreign} Jurisdiction Act. Short title, 1947.

2. In this Act,—

- (a) "~~extra-provincial~~ ^{Foreign} jurisdiction" means any jurisdiction which by treaty, agreement, grant, usage, sufferance or other lawful means the Central Government has for the time being in or in relation to any area outside the ~~Provinces~~ ^{India};
- (b) "jurisdiction" includes rights, power and authority.

3. (1) It shall be lawful for the Central Government to ~~exercise~~ ^{Exercise of} ~~extra-provincial~~ jurisdiction in such manner as it thinks fit. ^{jurisdiction.}

¹For Statement of Objects and Reasons, see Gazette of India, 1947, Pt. V, p. 471, for Report of Select Committee see *ibid* p. 610.

(2) The Central Government may ¹delegate any such jurisdiction as aforesaid to any officer or authority in such manner and to such extent as it thinks fit.

Power to
make
orders.

4. (1) The Central Government may, by ²notification in the official Gazette, make such orders as may seem to it expedient for the effective exercise of any ~~extra-provincial~~ ^{foreign} jurisdiction of the Central Government

(2) Without prejudice to the generality of the powers conferred by sub-section (1), any order made under that sub-section may provide—

(a) for determining the law and procedure to be observed, whether by applying with or without modifications all or any of the provisions of any enactment in force in any ~~Pro~~ ^{State} ~~vince~~ or otherwise;

(b) for determining the persons who are to exercise jurisdiction, either generally or in particular cases or classes of cases, and the powers to be exercised by them;

(c) for determining the courts, judges, magistrates and authorities by whom, and for regulating the manner in which, any jurisdiction auxiliary or incidental to or consequential on the jurisdiction exercised under this Act is to be exercised ~~State~~ ^{within any Province}; and

(d) for regulating the amount, collection and application of fees.

Validity of
acts done
in pursu-
ance of ju-
risdiction.

5. Every act and thing done, whether before or after the com-
mencement of this Act, in pursuance of any ~~extra-provincial~~ ^{foreign} jurisdiction of the Central Government in an area outside the ~~Provinces~~ ^{India} shall be as valid as if it had been done according to the local law then in force in that area.

Evidence as
to existence
or extent
of jurisdic-
tion.

foreign

6. (1) If in any proceeding, civil or criminal, in a Court establish-
ed in the ~~Provinces~~ ^{India} or by the authority of the Central Government out-
side the ~~Provinces~~, any question arises as to the existence or extent of
any ~~extra-provincial~~ jurisdiction of the Central Government, the Sec-
retary to the Government of India in the appropriate department shall,
on the application of the Court, send to the Court the decision of the
Central Government on the question, and that decision shall for the
purposes of the proceeding be final.

(2) The Court shall send to the said Secretary, in a document under
the seal of the Court or signed by a judge of the Court, questions fram-
ed so as properly to raise the question, and sufficient answers to those
questions shall be returned to the Court by the Secretary and those
answers shall on production thereof be conclusive evidence of the mat-
ters therein contained.

Repeal and
saving.

7. (1) The Extra-Provincial Jurisdiction Ordinance, 1947, is hereby ~~repealed~~ ^{XV of 1947}.

(2) Any order made, anything done or any action taken in exercise
of any power conferred by or under the said Ordinance shall be deemed
to have been made, done or taken in exercise of powers conferred by or
under this Act as if this Act had commenced on the 27th day of
August, 1947.

¹ For such delegation, see Gazette of India, 1948, Pt. I, pp. 338 and 431.

² For such notifications, see Gazette of India, 1948, Pt. I, pp. 44, 80, 201, 248, 281, 385, 386, 433, 454, 435, and *ibid*, Extraordinary, p. 75.

THE INDIAN NURSING COUNCIL ACT, 1947.

Act XLVIII of 1947.

[31st December, 1947.]

An Act to constitute an Indian Nursing Council.

WHEREAS it is expedient to constitute an Indian Nursing Council in order to establish a uniform standard of training for nurses, midwives and health visitors;

It is hereby enacted as follows :—

1. (1) This Act may be called the Indian Nursing Council Act, 1947. Short title, extent and commencement.
- (2) It extends to ~~all the Provinces~~ ^{whole} of India. ~~except the State of Jammu & Kashmir~~ 45/57
- (3) It shall come into force at once.

2. In this Act, unless there is anything repugnant in the subject or context,— Interpretation.

(a) "the Council" means the Indian Council of ~~Nursing~~ constituted under this Act; 45/57

(b) "prescribed" means prescribed by regulations made under section 16;

(c) "~~Provincial~~ Council" means a Council (by whatever name called) constituted under the law of a ~~Province~~ to regulate the registration of nurses, midwives or health visitors in the ~~Province~~; State

(d) "~~Provincial~~ register" means a register of nurses, midwives or health visitors maintained under the law of a Province.

3. (1) The Central Government shall as soon as may be constitute Constitution and Composition of the Council.

"(b) two members elected from amongst themselves by the heads of institutions recognised by the Council for the purpose of this clause in which training is given—

(i) for obtaining a University degree in nursing; or f

(ii) in respect of a post-certificate course in the teaching of nursing and in nursing administration;" f

45/57 n

MEDICAL ASSOCIATION,

(f) one member elected by the Council of the Trained Nurses Association of India;

¹ For Statement of Objects and Reasons see Gazette of India, 1947, Pt. V, p. 456.

the State Councils in the four groups of States mentioned below, each group of States being taken in rotation in the following order, namely:-

- (i) Kerala, Madhya Pradesh and Uttar Pradesh,
- (ii) Andhra Pradesh, Bihar, Bombay and Rajasthan,
- (iii) Mysore, Punjab and West Bengal,
- (iv) Assam, Madras and Orissa;"

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(i) the Chief Principal Matron, Medical Branch
Headquarters, *ex-officio*;

(j) the Chief Nursing Superintendent, office of the Director
General of Health Services, *ex-officio*;

"(l) the Chief Administrative Medical Officer (by whatever name called) of each State other than a Union territory, *ex-officio*;"

"(m) the Superintendent of Nursing Services (by whatever name called), *ex-officio* from each of the States in the two groups mentioned below each group of States being taken in rotation in the following order, namely:-

Andhra P
Uttar Pr

- (i) Andhra Pradesh, Assam, Bombay, Madhya Pradesh, Madras, Uttar Pradesh and West Bengal;
- (ii) Bihar, Kerala, Mysore, Orissa, Punjab and Rajasthan;"

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"(o) three members elected by Parliament two by the House of the People from among its members and the other by the Council of States from among its members."

bers

45/57

Provided that for five years from the first constitution of the Council the President shall be a person nominated from amongst the members of the Council by the Central Government, who shall hold office during the pleasure of the Central Government.

(3) No act done by the Council shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Council.

Incorporation of the Council.

4. The Council constituted under section 3 shall be a body corporate by the name of the Indian Nursing Council, having perpetual succession and a common seal, with power to acquire property both movable and immovable, and shall by the said name sue and be sued.

5. (1) Elections under sub-section (1) of section 3 by ~~Provincial~~ ^{Mode of elections.} Councils shall be conducted in accordance with rules made in this behalf by the respective ~~Provincial~~ Governments, and where any dispute arises regarding any such election it shall be referred to the ~~Provincial~~ ^{State} Government concerned whose decision shall be final.

(2) Other elections under that sub-section shall be conducted in the prescribed manner, and where any dispute arises regarding any such election it shall be referred to the Central Government whose decision shall be final.

6. (1) Subject to the provisions of this section, an elected or nominated member, other than a nominated President, shall hold office for a term of five years from the date of his election or nomination or until his successor has been duly elected or nominated, whichever is longer. ^{Term of office and casual vacancies.}

(2) An elected or nominated member may at any time resign his membership by writing under his hand addressed to the President, and the seat of such member shall thereupon become vacant.

(3) An elected or nominated member shall be deemed to have vacated his seat if he is absent without excuse sufficient in the opinion of the Council from three consecutive meetings of the Council where the interval between the first and third of the said meetings exceeds six months.

(4) A casual vacancy in the Council shall be filled by fresh election or nomination, as the case may be, and the person elected or nominated to fill the vacancy shall hold office only for the remainder of the term for which the member whose place he takes was elected or nominated.

(5) Members of the Council shall be eligible for re-election or re-nomination.

(6) ~~Members of the Council~~ ^{State} ~~being Provincial~~ ~~Directors of Public Health~~ should be deemed to be ~~nominated members for the purposes of this section.~~ ^{45/57}

7. (1) The Council shall hold its first meeting at such time and place as may be appointed by the President, and thereafter the Council shall meet at such time and place as may be appointed by the Council. ^{Meetings.}

(2) Until otherwise prescribed, ten members of the Council shall form a quorum, and all the acts of the Council shall be decided by a majority of the members present and voting.

8. (1) The Secretary of the Council (who may also, if it is deemed expedient by the Council, act as Treasurer) shall, for three years from the first constitution of the Council, be a person appointed by the Central Government and shall hold office during the pleasure of the Central Government. ^{Officers, committees and servants of the Council.}

(2) The Council shall—

(a) elect from among its members a Vice-President;

- (b) constitute from among its members an Executive Committee and such other committees for general or special purposes as the Council deems necessary to carry out the purposes of this Act;
- (c) subject to the provisions of sub-section (1), appoint a Secretary, who may also, if deemed expedient, act as Treasurer;
- (d) appoint or nominate such other officers and servants as the Council deems necessary to carry out the purposes of this Act;
- (e) require and take from the Secretary, or from any other officer or servant, such security for the due performance of his duties as the Council deems necessary;
- (f) with the previous sanction of the Central Government, fix the fees and allowances to be paid to the President, Vice-President and members and the pay and allowances of officers and servants of the Council.

The Executive Committee.

9. (1) The Executive Committee shall consist of nine members, of whom seven shall be elected by the Council from among its members.

(2) The President and Vice-President of the Council shall be members *ex-officio* of the Executive Committee, and shall be President and Vice-President, respectively, of that Committee.

(3) In addition to the powers and duties conferred and imposed upon it by this Act, the Executive Committee shall exercise and discharge such powers and duties as the Council may confer or impose upon it by any regulations which may be made in this behalf.

Recognition of qualifications.

10. (1) For the purposes of this Act, the qualifications included in the Schedule shall be recognised qualifications, and the qualifications included in Part II of the Schedule shall be recognised higher qualifications.

(2) Any authority, within the ^{States} ~~Provinces~~ of India which, being recognised by the ~~Provincial Government~~ ^{State Government} for the purpose of granting any qualification, grants a qualification in general nursing, midwifery, health visiting or public health nursing, not included in the Schedule may apply to the Council to have such qualification recognised, and the Council may declare that such qualification, or such qualification only when granted after a specified date, shall be a recognised qualification for the purposes of this Act.

(3) The Council may enter into negotiations with any authority in any ~~State or country outside the Provinces of India~~ ^{State or country} which by the law of such ~~State or country~~ is entrusted with the maintenance of a register of nurses, midwives or health visitors, for the settling of a scheme of reciprocity for the recognition of qualifications, and in pursuance of any such scheme the Council may declare that a qualification granted by any authority in any such ~~State or country~~ ^{State or country}, or such qualification only when granted after a specified date, shall be a recognised qualification for the purposes of this Act.

Provided that no declaration shall be made under this sub-section in respect of any qualification unless by the law and practice of the State or country in which the qualification is granted persons domiciled or originating in ~~any Province of India~~ and holding qualifications recognised under this Act are permitted to enter and practise the nursing profession in that State or country:

Provided further that—

(2) any reciprocal arrangements subsisting at the date of the commencement of this Act between a ~~Provincial~~ Council ~~State~~

"(ii) any qualification granted by an authority in a territory of India to which this Act did not extend at the date of its commencement and recognised on the said date by the State Council of a State to which this Act then extended, shall continue to be a recognised qualification for the purpose of registration in that State.

45/57

(4) The provisions of sub-sections (2) and (3) and of sections 14 and 15 shall apply *mutatis mutandis* to the declaration by the Council of a qualification granted in respect of post-certificate nursing training as a recognised higher qualification.

11. Notwithstanding anything contained in any other law,—

Effect of
recognition.

(a) any recognised qualification shall be a sufficient qualification for enrolment in any ~~Provincial~~ register;

(b) no person shall, after the date of the commencement of this Act, be entitled to be enrolled in any ~~Provincial~~ register as a nurse, midwife, health visitor, or public health nurse unless he or she holds a recognised qualification:

Provided that any person already enrolled in any ~~Provincial~~ register before the said date may continue to be so enrolled

qualification in one case, the approval of the Council for enrolment in a State register in the

"(2) Notwithstanding anything contained in clause (b) of sub-section (1)—

(a) a citizen of India holding a qualification which entitles him or her to be registered with any Council of Nursing or Midwifery (by whatever name called) in any foreign country, may, with the approval of the Council, be enrolled in any State register; and where approval has been accorded by the Council in respect of such

Provided that practice by such person shall be limited to the hospital or institution to which he or she is attached."

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Power to
require
informa-
tion as to
courses of
study and
training
and exam-
inations.

12. Every authority in any ^{State} ~~Province of India~~ which grants a recognised qualification or a recognised higher qualification shall furnish such information as the Council may, from time to time, require as to the courses of study and training and examinations to be undergone in order to obtain such qualification, as to the ages at which such courses of study and examinations are required to be undergone and such qualifications conferred, and generally as to the requisites for obtaining such qualification.

Inspections.

15/57 .

13. (1) The Executive Committee may appoint such number of inspectors ^{whether from among members of the Council or otherwise} as it deems necessary to inspect any institution recognised as a training institution, and to attend examinations held for the purpose of granting any recognised qualification or recognised higher qualification.

(2) Inspectors appointed under this section shall report to the Executive Committee on the suitability of the institution for the purposes of training and on the adequacy of the training therein, or as the case may be, on the sufficiency of the examinations.

(3) The Executive Committee shall forward a copy of such report to the authority or institution concerned, and shall also forward copies, with the remarks, if any, of the authority or institution concerned thereon, to the Central Government and to the ^{State} ~~Provincial~~ Government and ~~Provincial~~ Council of the Province in which the authority or institution is situated.

Withdrawal
of recogni-
tion.

14. (1) When, upon report by the Executive Committee, it appears to the Council—

(a) that the courses of study and training and the examinations to be gone through in order to obtain a recognised qualification from any authority in any ^{State} ~~Province of India~~, or the conditions for admission to such courses or the standards of proficiency required from the candidates at such examinations are not in conformity with the regulations made under this Act or fall short of the standards required thereby, or

(b) that an institution recognised by a ^{State} ~~Provincial~~ Council for the training of nurses, midwives or health visitors does not satisfy the requirements of the Council,—

the Council may send to the Government of the ^{State} ~~Province~~ in which the authority or institution, as the case may be, is situated a statement to such effect, and the ^{State} ~~Provincial~~ Government shall forward it, along with such remarks as it may think fit to the authority or institution concerned and, in a case referred to in clause (b) to the ^{State} ~~Provincial~~ Council also, with an intimation of the period within which the authority or institution may submit its explanation to the ^{State} ~~Provincial~~ Government.

(2) On the receipt of the explanation or, where no explanation is submitted within the period fixed, then on the expiry of the period, the ^{State} ~~Provincial~~ Government shall make its recommendations to the Council.

(3) The Council, after such further inquiry, if any, as it may think fit to make, and in a case referred to in clause (b) of sub-section (1), after considering any remarks which the Provincial Council may have addressed to it, may declare,—

State

"15A. Indian Nurses Register.--(1) The Council shall cause to be maintained in the prescribed manner a register of nurse, midwives, auxiliary nurse-midwives and health visitors to be known as the Indian Nurses Register, which shall contain the names of all persons who are for the time being enrolled on any State register.

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14."

(2) It shall be the duty of the Secretary of the Council to keep the Indian Nurses Register in accordance with the provisions of this Act, and from time to time, to revise the register and publish it in the Gazette of India and in such other manner as may be prescribed.

by
and

(3) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872, and may be proved by a copy published in the Gazette of India.

this
rule
such

15B. Supply of copies of State registers.— Each State Council shall supply to the Council twenty printed copies of the State register as soon as may be after the 1st day of April of each year and inform the Council without delay of all additions to, and other amendments in, the State register made from time to time."

of section 5 and in clause (a) of sub-section (2) of section 8 shall be conducted;

- (e) the summoning and holding of the meetings of the Council, the times and places at which such meetings shall be held, the conduct of business thereat and the number of members necessary to constitute a quorum;
- (d) prescribing the functions of the Executive Committee, the summoning and holding of meetings thereof, the times and places at which such meetings shall be held, and the number of members necessary to constitute a quorum;

*(f) prescribing the tenure of office and the powers and duties of the Secretary and other officers and servants of the Council;

(ff) prescribing the powers and duties of inspectors;"

45/57

for teachers of nurses, midwives and health visitors, and for training in nursing administration;

- (h) prescribing the conditions for admission to courses of training as aforesaid;
- (i) prescribing the standards of examination and other requirements to be satisfied to secure for qualifications recognition under this Act;
- (j) any other matter which is to be or may be prescribed under this Act.

(2) To enable the Council to be first constituted, the President may, with the previous sanction of the Central Government, make regulations for the conduct of the elections referred to in sub-section (2) of section 5, and any regulations so made may be altered or rescinded by the Council in exercise of its powers under this section.

Repeal of
Ordinance
XIII of
1947.

17. (1) The Central Nursing Council Ordinance, 1947, is hereby repealed.

omitted 45/57

(2) Anything done or any action taken in exercise of any power conferred by or under the said Ordinance shall, so far as it is not inconsistent with this Act, be deemed to have been done or taken in exercise of the powers conferred by or under this Act as if this Act had commenced on the 13th day of August, 1947.

new schedule - See ship

THE SCHEDULE.

(See sections 10 and 11.)

PART I

Recognised qualifications

A—General Nursing—

Certificates (including senior and junior certificates) and Diplomas in Nursing issued by any of the following authorities, namely :—

1. The Examination Board appointed by the Government of Madras.
2. The Bombay Nurses, Midwives and Health Visitors Council.
3. The Bombay Presidency Nursing Association (when issued before the 1st day of January, 1936).
4. The Bengal Nursing Council.
5. The United Provinces State Medical Faculty.
6. The United Provinces Nurses and Midwives Council.
7. The State Board of Medical Examinations, United Provinces.
8. The Punjab Nurses Registration Council.
9. The Bihar Medical Examination Board.
10. The Bihar Nurses Registration Council.
11. The Central Provinces Medical Examination Board.

"THE SCHEDULE
(see sections 10 and 11)

PART I

Recognised qualification

A.—General Nursing—

Certificates (including senior and junior certificates), Diplomas or Degrees in Nursing issued by any of the following authorities, namely:—

1. The Examination Board appointed by the Government of Madras.

2. The Bombay Nurses, Midwives and Health Visitors Council.

3. The Bombay Presidency Nursing Association (when issued before the 1st day of January, 1936)

4. The Bengal Nursing Council (when issued before the 15th day of August, 1947).

5. The Uttar Pradesh Medical Faculty.

6. The Uttar Pradesh Nurses and Midwives Council

7. The State Board of Medical Examinations, Uttar Pradesh (when issued before the 1st day of January, 1927).

8. (a) The Punjab Nurses Registration Council (when issued before the 15th day of August, 1947 or after the 26th day of January, 1950).

(b) The East Punjab Nurses Registration Council (when issued before the 26th day of January, 1950).

9. The Bihar Medical Examination Board (when issued before the 1st day of January, 1938).

10. The Bihar Nurses Registration Council.

11. The Madhya Pradesh Medical Examination Board (when issued before the 1st day of April, 1950).

12. The Assam Nurses, Midwives and Health Visitors Council.

13. The Orissa Medical Examination Board.

14. The Mid-India (United) Board of Examiners for Nurses (when issued before the 1st day of January, 1947).

15. The Joint Missionary Board for Examination of Nurses (Marathi area) (when issued before the

THE DELHI PREMISES (REQUISITION AND EVICTION) ACT, 1947.

¹Act XLIX of 1947.

[31st December, 1947.]

An Act to confer certain powers in respect of premises in the Province of Delhi.

WHEREAS by reason of the shortage of accommodation in the Province of Delhi an emergency has arisen which makes it necessary to confer powers to requisition premises and to evict from Government premises persons continuing without authority to occupy those premises:

It is hereby enacted as follows :—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Delhi Premises (Requisition and Eviction) Act, 1947.

(2) It extends to the Notified area of the Civil Station (Delhi), to New Delhi and to Karolbagh area. The Central Government may by ²notification in the official Gazette extend this Act to such other area or areas in the Province of Delhi as may be specified therein.

(3) It shall come into force at once.

(4) It shall remain in force till the 31st day of December, 1949, but the Central Government may by notification in the official Gazette extend it for a further period of one year.

Interpreta-
tion

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “compensation” includes—

(i) rent payable in respect of the premises requisitioned under this Act,

(ii) damages for any injury to the premises,

(iii) expenses on account of vacating or re-occupying the premises consequent on requisition and de-requisition,

(iv) pecuniary loss due to requisitioning;

(b) “competent authority” means the Estate Officer to the Government of India, and includes any other person authorised by the Central Government by ³notification in the official Gazette to perform all or any of the functions of a competent authority under this Act :

Provided that in respect of any function performable after the making of an order under sub-section (7) of section 3 or sub-section (1) of section 8, references to the competent authority shall be construed as references to the competent authority making that order;

¹ For Statement of Objects and Reasons, see Gazette of India, 1947, Pt. V, p. 488; for Report of Select Committee, see *ibid.*, p. 616.

² For such notifications, see Gazette of India, 1947, Extraordinary, p. 1417 and *ibid.*, 1948, Pt. I, p. 556.

³ Collector of Delhi authorised, see Gazette of India, 1947, Extraordinary, p. 1417.

XIX of
1947.

- (c) "landlord" has the meaning assigned to it in the Delhi and Ajmer-Merwara Rent Control Act, 1947;
- (d) "premises" means any building or part of a building and includes —
 - (i) the garden, grounds and outhouses, if any, appertaining to such building or part of a building,
 - (ii) any furniture supplied by the landlord for use in such building or part of a building, and
 - (iii) any fittings affixed to such building or part of a building for more beneficial enjoyment thereof;
- (e) "public purpose" means any purpose which is so declared by rules made under this Act;
- (f) "tenant" means any person by whom or on whose account rent is payable for any premises and includes every person for the time being deriving title under a tenant and also every person remaining in possession of the premises leased to him after the termination of the lease.

3. (1) Whenever it appears to the competent authority that any premises is needed or is likely to be needed for any public purpose it shall be lawful for him or for any other person, either generally or specially authorized by such authority in this behalf, after due notice to enter upon and inspect such premises for the purpose of determining whether and if so, in what manner an order under this section shall be made in relation to such premises or with a view to securing compliance with any order made under this Act. Power to Requisition.

(2) The competent authority, with a view to requisition any premises under this sub-section, may by an order—

- (a) require any person to furnish to such authority as may be specified in the order such information in his possession relating to the premises as may be so specified;
- (b) direct that the landlord, occupier or person in possession of the premises shall not without the permission of the competent authority dispose of or structurally alter the premises.

(3) Where the competent authority decides that it is necessary to requisition the premises for any public purpose he shall call upon the landlord and the tenant or the person in possession by notice in writing to show cause within seven days why the premises should not be requisitioned.

(4) If after considering the cause if any, shown by the landlord or the tenant or the person in possession the competent authority is satisfied that it is necessary to requisition the premises for any public purpose he may make an order in writing to that effect:—

Provided that where a landlord or tenant is using any premises for the residence of himself or his family the competent authority shall as

far as possible provide alternative accommodation which in the opinion of the competent authority is suitable.

(5) A notice under sub-section (3) and an order under sub-section (4) shall be served on the landlord and where the notice or the order relates to premises in occupation of the tenant also on such tenant by delivering or tendering to such landlord and tenant a copy of the notice and the order. But where the landlord or tenant is not readily traceable and the notice and the order cannot be served without undue delay or where ownership of the premises is in dispute the notice and the order shall be served by publishing it in the official Gazette and by affixing a copy thereof to any conspicuous part of the premises to which it relates.

Exclusion
of certain
premises
from requi-
sitioning.

4. Nothing in section 3 shall empower the competent authority to requisition premises which are exclusively used for the purpose of religious worship or which are in use for a school, orphanage, or hospital.

Appeal.

5. Any person aggrieved by an Order of Requisition may, within seven days from the date on which it is communicated to him, appeal from such order to the Chief Commissioner, Delhi, on the ground that the provisions of this Act relating to requisitioning have not been complied with.

Power to
order vaca-
tion of
premises.

6. (1) Where the competent authority requisitions any premises under this Act, he may by notice in writing order the existing tenant or occupier, if any, to vacate the premises within ten days of the receipt of the notice.

(2) If any person fails to comply with an order made under sub-section (1) he shall be deemed to be a trespasser and the Competent Authority may take possession of the premises requisitioned forthwith.

(3) The right to take possession under this section shall not be affected by reason of any appeal preferred against the order of Requisitioning.

Compensa-
tion.

7. (1) Where any premises are requisitioned under this Act, the amount of compensation shall be determined in the manner, and in accordance with the principles hereinafter set out, namely:—

- (a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;
- (b) where no such agreement can be reached, the Central Government shall appoint as arbitrator a person qualified for appointment as a Judge of a High Court;
- (c) the Central Government may, in any particular case, nominate a person having expert knowledge as to the nature of the premises requisitioned, to assist the arbitrator, and where such nomination is made, the person to be compensated may also nominate an assessor for the said purpose;
- (d) at the commencement of the proceedings before the arbitrator, the Central Government and the person to be compensated

I of 1894

ed shall state what in their respective opinions is a fair amount of compensation;

(e) the arbitrator in making his award shall have regard to the provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894 so far as they can be made applicable:

(f) an appeal shall lie to the District Judge against an award of an arbitrator;

(g) save as provided in this section and in any rules made thereunder, nothing in any law for the time being in force shall apply to arbitrations under this section.

(2) The compensation shall be paid by the competent authority to the person entitled thereto.

8. (1) Where any premises are requisitioned under this Act, the Central Government—

Rights and
Liabilities
of the
Central
Govern-
ment.

(i) may use or deal with the premises for such purpose as may be mentioned in the Order of Requisition;

(ii) may, without prejudice, to the liabilities it may be subject to in respect thereof, transfer by way of sub-lease the whole or any part of such premises;

(iii) may order the landlord to execute necessary repairs or repairs usually made to premises in that locality and as may be specified in the notice, within such time as may be mentioned therein and if the landlord fails to execute any repairs in pursuance of such order, the competent authority may cause the repairs specified in the order to be executed at the expense of the landlord and the cost thereof may, without prejudice to any other mode of recovery, be deducted from the compensation payable to the landlord;

(iv) shall restore the premises in as good condition as they were in at the time when possession thereof was taken subject only to the changes caused by reasonable wear and tear and irresistible force;

(2) Where any premises requisitioned under this Act or any material part thereof, are wholly destroyed or rendered substantially and permanently unfit for the purpose for which they were let by reason of fire, tempest or flood or violence of any army or of a mob or other irresistible force, the requisition shall at the option of the Central Government be void:

Provided that if the injury is occasioned by the wrongful act or default of the Central Government, the Central Government shall not be entitled to avail itself of the benefit of this section.

9. (1) Where any premises requisitioned under this Act are to be released from such requisition, the competent authority may, after such inquiry if any as he may in any case consider it necessary to make,

Release
from requi-
sition.

specify by order in writing the person to whom possession of the premises shall be given.

(2) The delivery of possession of the premises to the person specified in an order under sub-section (1) shall be a full discharge of the Central Government from all liabilities in respect of the premises, but shall not prejudice any rights in respect of the premises which any other person may be entitled by due process of law to enforce against the person to whom possession is given.

Easements
etc, not to
be distur-
bed.

10. No landlord or any contractor, workman or servant employed by him shall without the previous written consent of the competent authority or except for the purposes of effecting repairs or complying with a municipal requisition, wilfully disturb any convenience or easement attached to any premises requisitioned under this Act, or remove, destroy or render unserviceable anything provided for permanent use therewith or discontinue or cause to be discontinued any supply or service provided for the premises.

Power to
evict from
Govern-
ment prem-
ises for
breach of
terms of
tenancy.

11. (1) Where the person in occupation of any premises belonging to, or taken on lease or requisitioned by, the Central Government, sublets without due authority the whole or any part of the premises or otherwise acts in contravention of any of the terms, express or implied, of his tenancy or other like relationship created by a grant from the Central Government in respect of the premises, or where any person is in occupation of any such premises without the authority of the Central Government, the competent authority may by notice served by post or otherwise, order such person or any other person found in occupation of the premises to vacate the premises within ten days of the receipt of the notice.

(2) Any person aggrieved by an order under sub-section (1) may within seven days of the receipt thereof appeal in writing to the Chief Commissioner, who may, after calling for a report from the competent authority and after making such further inquiry, if any, as he thinks fit, pass an order determining the appeal.

(3) Action may be taken under this section whether or not any proceedings for possession are pending in respect of the premises, and upon such action being taken the said proceedings shall forthwith be vacated.

Power to
make rules.

12. (1) The Central Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the power conferred by sub-section (1), rules made thereunder may provide for—

- (a) the procedure to be followed in arbitrations and appeals under section 7;
- (b) the principles to be followed in apportioning the costs of proceedings before the arbitrator and on appeal under section 7;

¹ For *Delhi Premises (Requisition and Eviction) Rules, 1947*, see *Gazette of India, 1947, Extraordinary*, p. 1417.

(c) the procedure to be followed by a competent authority in inquiries under section 9;

(d) for defining what are public purposes;

(e) the procedure to be followed in taking possession of the premises requisitioned;

(f) the manner of service of notices and orders.

13. (1) Except as otherwise provided for in this Act no order made in exercise of any power conferred by or under this Act shall be called in question in any Court. Saving as to orders.

(2) Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act, a Court shall presume, within the meaning of the Indian Evidence Act, 1872, that such order was so made by that authority. I of 1872.

14. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any order made thereunder. Protection of action taken under this Act.

(2) Save as is otherwise expressly provided in this Act, no suit or other legal proceeding shall lie against the Central Government for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

15. (1) The provisions of this Act shall be in addition to and not in derogation of the provisions of the Delhi and Ajmer-Merwara Rent Control Act, 1947. Application of other laws not barred.

(2) The provisions of this Act shall have effect notwithstanding anything contained in any other law or in any instrument having effect by virtue of any other law. XIX of 1947.

16. (1) The Delhi Premises (Requisition and Eviction) Ordinance, 1947, and the Delhi Premises (Requisition and Eviction) Amendment Ordinance, 1947, are hereby repealed. Repeal-
XII of 1947.
XXI of 1947.

(2) Anything done or any action taken in exercise of any power conferred by or under either of the said Ordinances shall be deemed to have been done or taken in exercise of powers conferred by or under this Act as if this Act had commenced on the 13th day of August, 1947

THE AJMER-MERWARA (EXTENSION OF LAWS)
ACT, 1947.

¹Act LII of 1947.

[31st December, 1947.]

An Act to provide for the extension of enactments to the Province of Ajmer-Merwara.

WHEREAS it is expedient to provide for the extension of enactments to the Province of Ajmer-Merwara;

It is hereby enacted as follows:—

Short title. 1. This Act may be called the Ajmer-Merwara (Extension of Laws) Act, 1947.

Extension of enactments to Ajmer-Merwara. 2. The Central Government may, by ²notification in the official Gazette, extend to the Province of Ajmer-Merwara with such restrictions and modifications as it thinks fit any enactment which is in force in any other Province at the date of such notification.

¹ For Statement of Objects and Reasons, see Gazette of India, 1947, Pt. V, p. 608.
² For such notifications, see Gazette of India, 1948, Extraordinary, pp. 14, 415, 621; and ibid. Pt. I, pp. 118 and 142.

THE SALARIES OF MINISTERS ACT, 1947.

¹Act LIII of 1947.

[31st December, 1947.]

An Act to provide for the salaries of Ministers.

WHEREAS it is expedient to provide for the salaries of the Ministers of the Dominion of India and for matters connected therewith;

It is hereby enacted as follows:—

1. (1) This Act may be called the Salaries of Ministers Act, 1947.

Short title
and comm-
encement.

(2) It shall come into force on the first day of January, 1948.

2. In this Act,—

Definitions.

(a) “Minister” means a Minister of the Dominion of India;

(b) “residence” includes the staff quarters and other buildings appurtenant thereto, and the gardens thereof;

(c) “maintenance” in relation to a residence includes the payment of local rates and taxes and the provision of electricity and water.

3. With effect from the date on which this Act comes into force there shall be paid to each Minister a salary of three thousand rupees *per mensem*, and a sumptuary allowance of five hundred rupees *per mensem*.

Salaries
and allow-
ances of
Ministers.

4. (1) Each Minister shall be entitled, without payment of rent, to the use of—

Residences
of Minis-
ters.

(a) a fully furnished residence in New Delhi throughout his term of office and for a period of fifteen days immediately thereafter, and

(b) a fully furnished residence in Simla for such period or periods during the summer season of each year as the Governor General may by general or special order determine,

and no charge shall fall on the Minister personally in respect of the maintenance of either residence.

(2) Nothing in this section shall apply in respect of the use and occupation by any Minister of residences in New Delhi or Simla before the date on which this Act comes into force.

¹ For Statement of Objects and Reasons, see Gazette of India, 1947, Pt. V, p. 607.

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